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APPENDIX
Volume II

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-636 and No. 75-672
(Consolidated)

No. 75-636
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent,

and

No. 75-672
T.I.M.E.-D.C., INC.,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI IN NO. 75-636 FILED OCTOBER 29, 1975
PETITION FOR CERTIORARI IN NO. 75-672 FILED NOVEMBER 6, 1975
CERTIORARI FOR BOTH GRANTED MAY 24, 1976

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[134] IRIS GORDON HICKS,

called as a witness at the instance of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Contreras

Q. Would you please state your name? A. Iris G. Hicks.

Q. What is your address, Miss Hicks? A. 2329 Annabelle Lane, Forth Worth.

Q. What is your race? A. Black.

Q. What is your education, Miss Hicks? A. Two years college level.

Q. And where was this? A. Lincoln University, Jefferson City, Missouri.

Q. Were you ever employed by T.I.M.E.-DC or a predecessor company of T.I.M.E.-DC? A. Yes, I was.

[135] Q. What was that company? A. Pardon?

Q. And what was that company? A. It was at that time Denver-Chicago Trucking Lines.

Q. I'd like to hand you what has been marked as Government's Exhibit 161, which is titled a Denver-Chicago Trucking Company Application for Employment. Are you able to identify this? A. Yes.

Q. And this is your signature on Page 4? A. Yes.

Q. And what was your name at that time? A. Iris G. Darden.

Q. And when were you employed by Denver-Chicago? A. 1966, about August.

Q. How did you happen to apply for employment with Denver-Chicago? A. The Urban League in the City of Los Angeles

qualified me for the position that was open and sent me there.

Q. And do you recall the name of the person who referred you? A. No, I don't.

Q. Were you given any information about the referral? A. Yes.

Q. What was that for? A. The company had not previously hired blacks and I would **[136]** be the first black to have an office position for the company.

Q. All right. And what kind of work experience did you have at that time? A. I had been a telephone operator, I had been a teletype operator, I was a licensed beautician.

Q. And at the time of your application, did you take any tests? A. Yes, I took a general aptitude test.

Q. And who administered this examination? A. I believe that was Mr. Dave Nagel, but I am not positive.

Q. And do you know what his title is, or was? A. No title as such. Personnel department.

Q. For whom? A. Denver-Chicago.

Q. All right. I'd like to hand you what has been marked as Government's Exhibit 162(a) and 162(b). These are entitled Personnel Tests and CWF-2. Are you able to identify these? A. Yes.

Q. And what are these? A. My examinations that I took.

Q. These are copies of the examination which you took? A. Yes.

Q. Upon your application for employment with Denver-Chicago, what happened when you applied? A. After I was given the examination, I was told that I **[137]** would hear from them.

Q. And do you recall with whom you spoke? A. If it was not Mr. Nagel, I'm not sure. It's been a long time.

Q. Can you give us an idea of what title the person may have held? A. Yes. Personnel department. I only talked with the personnel department employees.

Q. All right. Were you notified of the results of the examination? A. Yes.

Q. And how were you notified? A. By telephone. I was called and told that I passed the exams; that I was to report to work the following Monday.

Q. Was there any indication when you made application and took these tests of what position was open? A. No, not at that time.

Q. Did you at that time know who your supervisor would be? A. No.

Q. Was there any mention of your race made? A. Not at that time.

Q. All right. When were you notified that you would be employed by Denver-Chicago? A. By telephone, either the first or second day after I had taken the examination.

[138] Q. And what was the procedure at that time? A. Was I available for work immediately, because it was like the middle of the week, Wednesday or Thursday, and I said I was and they asked me if I could report to work on Monday and I said I could.

Q. All right. And what happened when you reported for work? A. When I reported for work, I talked to this same individual in personnel who told me that I would be a billing clerk. They had a person who was leaving in the billing department and I would take her place. She would train me for—yes, for four weeks before she left. I think that's correct.

Q. Was any mention made of the duties of this position? A. Not by him.

Q. All right. Did you receive any indication as to the duties of that position? A. Well, when I met the person who was going to train me. I did not from the personnel individual.

Q. All right. And who was to train you? A. It was an individual who occupied the job, and her first name was Nancy. I do not remember her last name.

Q. All right. And was there any indication of the length this training was to take? A. Four weeks.

[139] Q. At the time you reported for work, was there any mention made of your race? A. Yes. I was called in by a different person in personnel, and I do not remember the name, and he mentioned that I was the first Negro ever to be employed by the company in the office, and he said if I ever had any problems, to let him know.

Q. Mrs. Hicks, I'd like to hand you what has been marked Government's Exhibit 163(a). This document is entitled Application for Fidelity Bond. I'd like to have you refer specifically to the portion that is Item Number 6, which is entitled State Duties to be Performed, and what is typed in there. A. Stripping and sorting and preparing bills for collection and filing.

Q. Were these the duties of the position which you held? A. Yes.

Q. Essentially what is that function? A. Bills come with many carbon copies, and they have to be stripped. The carbon has to be taken out and each portion of the bill goes to a different place, or has to have certain markings or certain identification, and then it has to be labeled and sent to a different department.

Q. When you arrived to begin work, were you given instructions at that time as to the performance of your job? A. No, not at that time. When I was introduced to Nancy, **[140]** Nancy gave me instructions about the job.

Q. What instructions were you given? A. Basically, what I would be doing as a billing clerk.

Q. And was this essentially more or less a sorting and routing of copies of the bills? A. Yes.

Q. Did you make any observation as to the amount of workload on the job at that time? A. Yes, I did. I asked questions.

Q. All right. Was there any visible indication of the amount of workload on that particular job? A. It appeared to be about a year's work on that particular desk because the bills were piled all over the floor, in the desk drawers, on top of the desk and around the sides.

Q. And did this person that you have named as Nancy make any observation about this? A. Yes. She told me not to worry about it, the desk had never been caught up since she had worked there. It never would, and that the desk was overloaded.

Q. How long were you trained by the person you have named as Nancy? A. Four days.

Q. Do you know the reason for the length of training? A. She personally told me that she had to leave earlier than she had expected to leave because she was being—she **[141]** was moving out of town.

Q. Was anyone else assigned to train you? A. No.

Q. Were you in fact trained by anyone else? A. No.

Q. After the four-day period you began working by yourself. A. Yes.

Q. Were you able to make any progress as to this work level —excuse me, the workload which she mentioned? A. Yes, I did. The first day I was alone I completed a bottom drawer, which is where we always began with bills, and I completed a drawer and started on another drawer.

Q. Was there any comment on your work during the period of your employment by your supervisor? A. Yes.

Q. And what was that comment? A. I was not working fast enough and the bills had to be caught up.

Q. And who made this comment? A. The supervisor who is immediately in charge of the desk that I was on. I don't remember names.

Q. All right. Do you know what his position was? A. Other than supervisor, I don't remember.

Q. Approximately how long was this after you began employment? **[142]** A. It was on the Monday which was—would have been the sixth day of my employment.

Q. Did you make any notations during your training? A. No. I was told that when I started to make notes, there wasn't time to make notes, there was so much to be learned, and I didn't have time to write it down.

Q. Who made this observation? A. Nancy.

Q. Did you make any notes? A. Not while she was there.

Q. Did you later make any notes? A. Yes, I did. It was impossible to remember all the things that had to be done.

Q. Did you ever make any other written notations as to the work to be done? A. Yes, I did. I was accused of sending certain bills to the wrong desk and before I was accused of this I had written down what desk the bills went to so I could remember, because there was such a variety of things that had to be done. When I was accused, I checked the list that I had made to see if my list was correct. First, I had checked with someone to be sure where they were supposed to go, and they said they were suppoed to go to this particular desk, and when I checked my list that was the desk that I had taken them to. However, I made no mention of having had a list to check.

[143] Q. Who made this comment to you about sending these items to the wrong desk? A. The supervisor.

Q. Now, this is your immediate supervisor? A. Yes.

Q. All right. And whom did you ask what desk these bills were to be sent to? A. Nancy, and after Nancy left, there was one other person who had previously worked the billing desk, and I asked her where the bills went.

Q. What were the circumstances under which you left Denver-Chicago? A. I was terminated.

Q. And with whom did you speak? A. I spoke to an individual that I had never seen before, who was in a supervisory capacity.

Q. Do you recall his name? A. No, I'm sorry, I don't.

The Court: When, Counsel?

Q. (By Mr. Contreras) Yes. How long after your employment did this occur? A. (By the witness) It was one day short of becoming a union member, and whatever the qualifications were, I think they were thirty days.

The Court: How many, thirty?

[144] A. (By the witness) Yes.

The Court: You worked almost thirty days?

A. (By the witness) Right.

Q. (By Mr. Contreras) Do you know the reason why you did not speak with your supervisor? A. (By the witness) Rephrase the question, please.

Q. Do you have any knowledge as to why you did not speak with your supervisor at that time? A. When I was terminated?

Q. Yes.

Mr. Schuler: Your Honor, could I have that question read?

(The immediate preceding question was read to Counsel by the reporter.)

Mr. Schuler: I object to the form of that question, Your Honor. I think that calls for a conclusion.

The Court: I sustain the objection. I think the question is why did you not speak with the supervisor. Is that your question.

Mr. Contreras: That is my question, Your Honor.

A. (By the witness) I have no idea.

The Court: You don't have any idea why you didn't speak with him?

A. (By the witness) Right.

[145] Q. (By Mr. Contreras) What reason were you given for your termination? A. (By the witness) I was not dexterous.

Q. Have you ever performed any work requiring dexterity? A. Yes.

Q. And what positions would those be? A. Switchboard operator, teletype opeartor, beauty operator.

Q. What was your reply to this reason for your termination? A. I asked him if he meant what he was saying and he answered yes, and he asked me if I knew what dexterity meant and I said well, maybe I don't, and he said being able to use your hands. And I asked him again, are you sure you mean that I am not dexterous, and he said yes.

Q. Have you ever taken a dexterity test? A. For the State of California, for the telephone company, and for Adams Answering Service.

Q. Did you ever ask any of your fellow employees about the duties to be performed on the job? A. None of my fellow employees spoke to me or talked to me.

Q. Was this just during the actual operation of the office hours? A. This was during a period from the time I arrived at work until I left work.

Q. Did you have any occasion to inquire about the operations of the job during break time? **[146]** A. When Nancy was still there, the four days she was there, the first day she took me

to the cafeteria and the tables were long and joined, several tables pushed together, and when we sat down, everyone else at the table moved to the far end of it.

One day after she left I attempted to go in the cafeteria and eat my lunch and everybody moved away from me. After then I stopped eating in the cafeteria. I ate either in my car or I would leave the grounds.

Q. Was the office under a collective bargaining agreement at this time? A. Yes.

Q. Were you a member of the union? A. No. I was—I received a union card after I was terminated in the mail.

Q. Do you recall what union that was? A. I know very little about unions, but I think it was AFL-CIO.

Q. I'd like to hand you what has been marked as Government's Exhibit 163(b), which is a medical history questionnaire. Are you able to identify this as your signature? A. Yes.

Q. Mrs. Hicks, did you remain in Los Angeles after your termination? A. For awhile.

Q. How long? **[147]** A. When I was terminated, immediately after having been terminated, I had to see a doctor and my doctor put me in the hospital under an extremely nervous condition, and other problems, and that was in September and I remained in Los Angeles until January of '67.

Q. And at that time what happened? A. I went—I moved to Oklahoma. My father was ill and I moved to Oklahoma to help him with his business.

Q. From the time that you left, did you return to work in the Los Angeles area? A. I didn't return to work.

The Court: How long were you in the hospital?

A. (By the witness) Approximately ten days.

The Court: Was this because of your nerves, you say, or that was part of it?

A. (By the witness) Yes, sir. I had a——

The Court: Have you had any trouble before?

A. (By the witness) Not of that type.

The Court: Do you think it had anything to do with the job?

A. (By the witness) My doctor did.

The Court: Your duties on the job?

A. (By the witness) Not the duties, sir, the conditions. Not duties as such, but conditions.

[148] Q. (By Mr. Contreras) Mrs. Hicks, I'd like to hand you what has been marked as Government's Exhibit Number 160, and this is entitled, Los Angeles Urban League Referral Card. I would like to know whether you are able to identify it. A. (By the witness) Yes.

Q. Now, did the work you performed for Denver-Chicago as billing clerk require dexterity? A. Yes, it did.

Q. And could you give us some of the details of the dexterity that was required? A. To be able to handle as many pieces of paper as were necessary, correlating these pieces of paper and placing some face up, some face down, stamping, clipping.

Q. And the many dexterity tests which you have related previously, had you taken those before your employment with Chicago, or afterward? A. Before.

Q. Mrs. Hicks, the employment which you indicated, I believe, with the telephone company and as a beautician, did those positions require dexterity? A. Yes, they did.

Q. All right. And did you hold those positions prior to your employment with Denver-Chicago? A. Yes. And that is where I took the dexterity examinations.

Q. Previous to your employment in those professions. **[149]** A. Yes.

Mr. Contreras: Your Honor, at this time I'd like to offer Government's Exhibit 160.

The Court: Well, aren't they on the pre-trial order?

Mr. Fenton: Yes, Your Honor, they are on the pre-trial order. They are marked as depositions on the pre-trial order. It is our understanding that the defendants may have some objections to some of the depositions, so at this time we'd like to offer these particular exhibits into evidence.

The Court: I admitted them this morning.

Mr. Fenton: Thank you. That included all of the deposition exhibits?

The Court: Yes, sir. Every one of them, subject to the right of these parties to raise their objections at the appropriate time during the trial.

Mr. Fenton: All right. We offer Numbers 160 through 163(b).

The Court: I'm only going to permit you to offer them once. Let's save some record here.

Mr. Fenton: All right. Fine.

Mr. Contreras: No further questions.

The Court: All right, sir.

Let me say, also, it won't be necessary that you offer **[150]** them but once, because the record now shows that they have all been tendered and admitted by the Court subject to later objections, so we won't have to go through all that.

All right, sir. Excuse me.

Mr. Fenton: Thank you.

Cross-Examination

By Mr. Schuler

Q. Mrs. Hicks, have you ever had a job as a billing clerk before you made inquiry at Denver-Chicago? A. Yes, I have.

Q. And where was that? A. At Adams Answering Service where I was also a switchboard operator.

Q. Now, when you received notice of discharge, was that in written form? A. No, it was not. It was in verbal.

Q. I see. And by the fact that you mention dexterity and that this was the language used by the person who discharged you, I gather that you believe that in your opinion you are dexterous, is that true? A. I don't know how to answer that, sir.

Q. Well, do you think you are not dextrous? A. I know that I am dexterous.

Q. It is your opinion that you are dexterous. A. Right.

[151] Q. And now, do you think that other people are entitled to have an opinion of their own about the work of other people? A. Of course.

Q. Do you recognize that someone else might look at your work and might form the opinion that you were not dexterous? A. Then, an examination would be necessary to prove a point.

Q. Well, my point is, do you recognize the right of someone else to have an opinion about your work? A. Sure.

Q. All right. Now, after you were discharged from T.I.M.E.-DC, did you file a charge with the EEOC, or the Post Office Department, about your discharge? A. Yes, I did.

Q. And was that charge dismissed? A. I would not use those words.

Q. Well, was it prosecuted to a completion? A. No.

Mr. Schuler: No further questions.

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[214] LUBBOCK, TEXAS, MAY 4th, 1972
9:00 A.M.

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The Court: All right. Gentlemen, let's see, I believe we had completed with one witness. Are you ready to start with some more testimony or evidence?

Mr. Fenton: Your Honor, before we call our first witness this morning, yesterday you requested that we provide the Court——

The Court: Yes, sir.

Mr. Fenton: ——with a list of those persons for whom we are seeking individual relief apart from class relief.

The Court: It would be most helpful if I could have that to follow the testimony with.

Mr. Fenton: We tender this list with the Court at this time. We have provided copies to the company and the unions.

The Court: Thank you.

Mr. Fenton: Should I leave the original with the clerk?

The Court: Yes.

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[233] **ROGER McCRIMMON,**
called as a witness at the instance of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Contreras

Q. Please state your name. A. Roger Lee McCrimmon.

Q. Mr. McCrimmon, what is your address? A. 2133 East Ledbetter, Dallas.

Q. And your race? A. Colored.

Q. What is your employment? A. T.I.M.E.-DC.

Q. And in what position are you employed? **[234]** A. As a city truckdriver.

Q. When were you employed by T.I.M.E.-DC? A. June 30th, 1969.

The Court: Ninteen when?

A. (By the witness) Sixty-nine.

Q. (By Mr. Contreras) Mr. McCrimmon, I'd like to hand you what have been marked as Plaintiff's Exhibit Number 237, entitled Partial Personnel File of Roger Lee McCrimmon. I'd like to refer you to a document entitled Application for Employment. What is the date of that—I'd like to know whether you are able to identify this. A. (By the witness) Yes.

Q. And is this your signature? A. It is.

Q. All right. What is the date of that document? A. July 7th, 1969.

Q. All right. And in the job applied for, what do you have? A. Truckdriver.

Q. All right. How many years of truck driving experience did you have when you applied? A. Overall, a little over twenty

years, because I started driving a truck when I was fifteen, in 1946.

Q. How much of this experience was over-the-road? A. Approximately two years.

Q. All right. Was this prior to your employment with **[235]** T.I.M.E.-DC? A. Right.

Q. Could you give us an idea of the nature of that driving, the scope of that driving? A. For Tom Hicks Transfer Company, I was hauling heavy equipment, bulldozers, anything; Armour Truck Line, and we hauled meat, frozen food.

Q. To where were you driving? A. Kansas, Chicago, Indianapolis, practically all over.

Q. Was this driving out of Dallas? A. Yes. No, beg your pardon. Out of Fort Worth.

Q. Out of Fort Worth, Texas. At the time that you made the application, did you know whether or not T.I.M.E.-DC had any black road drivers? A. Only hearsay.

The Court: I beg your pardon?

A. (By the witness) Only hearsay.

The Court: Well, did you know any personally?

A. (By the witness) No.

Q. (By Mr. Contreras) Did you ever ask about a road driving job after you were employed? A. (By the witness) Yes.

Q. When? A. April 12th, unless I have my dates mixed up, 1970.

[236] Q. All right. Whom did you ask? A. Mr. Paul Sipels.

Q. What was his title? A. Terminal manager.

Q. What was the response to your request? A. Well, he seemed surprised and said I was better off where I was, and besides it was a company policy——

The Court: It was what?

A. (By the witness) A company policy for a man that has worked in the city for the company to transfer to the road——

The Court: It was company policy for them to transfer?

A. (By the witness) Not to transfer. I beg your pardon.

The Court: Oh, not to transfer.

Q. (By Mr. Contreras) And did you make any inquiry as to the policy? A. (By the witness) Not expressly. We talked about it. He said it was just something that just wasn't done, you know, that they just didn't make a practice of doing that. Once a man worked in the city, well, that was it.

The Court: Now, who is the man that told you that?

A. Paul Sipels.

The Court: Sanders?

A. (By the witness) Sipels.

[237] The Court: How do you spell that?

A. (By the witness) S-i-p-e-l-s.

The Court: What was his job?

A. (By the witness) Terminal manager.

The Court: At Dallas?

A. (By the witness) Yes, sir.

Q. (By Mr. Contreras) Did you know at that time when you made that request whether there were any black road drivers for T.I.M.E.-DC? A. (By the witness) No.

Q. Did you know that there were black road drivers, or that there were not black road drivers? A. Well, at this time, I had been there since '69, and I hadn't seen any. I didn't believe that there were.

Q. Do you know of any city drivers for T.I.M.E-.DC in Dallas who have transferred to road driving for T.I.M.E.-DC in Dallas? A. No.

Mr. Contreras: No further questions.

Mr. Schuler: Could I have just a minute, Your Honor?

The Court: Yes, sir.

While we are waiting here, Mr. Fenton, there is an exhibit that we were looking at yesterday showing employees' [238] dates of seniority. We talked about this exhibit in connection with the testimony of Mr. Walter Gene Price, where there were three blacks hired as regulars just before he went to work, and four just afterward, and I can't find that exhibit up here. Could you give me the number of it?

Mr. Fenton: Your Honor, that is in the Dallas exhibit package.

The Court: Yes. I had it yesterday.

Mr. Wells: It is 146, Your Honor.

The Court: One forty-six. Well, I thought I had it up here. Would this be pertinent about what I was talking about as to Mr. Holley a moment ago?

Mr. Fenton: Yes. The line driver seniority roster is the second page of Exhibit 146.

The Court: That's the one I'm looking for. Yes, thank you.

Cross-Examination

By Mr. Schuler

Q. Mr. McCrimmon, on your application for employment, which has been marked as Exhibit 237, you did state that you wanted a job as "truckdriver", isn't that true? A. Right.

Q. And in your work experience, the driving experience, you showed consisted primarily of two months as a line driver for

Armour Truck Lines in Fort Worth as one of the entries, is **[239]** that correct, and three months as a heavy equipment truckdriver for Tom Hicks Transfer in 1968. Is that also correct? A. Yes.

Q. And five months of driving in—well, let's see, how long did you drive for the flower shop? A. Nine years.

Q. And was that a straight truck? A. Yeah. Well, it was a panel delivery.

Q. Right. And I gather than on the third page of the application, this is why your experience shows up as primarily being on a straight truck, eighteen years on a straight truck, is that correct?

The Court: On what kind, straight?

Mr. Schuler: Straight truck.

The Court: You're talking about a city truck?

Mr. Schuler: That's right.

A. (By the witness) Yes. Including, I had worked for a cement company and a building contractor, and all of this is tied in there.

Q. (By Mr. Schuler) On your experience entries on the application, you listed two years with the truck and full trailer and three years with others, but you didn't put down any mileage from which the company could determine how far you had driven, did you? **[240]** A. (By the witness) No.

Q. Now, under traffic convictions on your application you showed only one conviction on 5/8, 1969, but let me show you a form that you signed at the company. Don't you show a couple of driving convictions on that? A. Yeah.

Q. You do show two convictions for driving in April of '69 and May of '69, don't you? A. Right.

Q. So to that extent, your application is somewhat in error, isn't it? A. Now, what other——

Q. Well, look at your application where you show traffic convictions, you only show the one on May 8th, 1969, there, don't you, and there was another one prior to that, wasn't there; isn't that true, Mr. McCrimmon, from the form that you also have in your file entitled Accident and Violation Record? A. Well, when this application was made, I probably just forgot it, you know. I didn't remember it.

Q. All right. I understand that might be possible, but you would agree with me, wouldn't you, that the traffic conviction section of your application is in error. A. Yes, yes.

Q. And the next section talks about driving accidents, and you show two of them, and you are asked how many accidents have **[241]** you had in the last five years, and you list two there, don't you? A. Yes.

Q. Now, similarly, would you agree with me that the Texas Driver Licensing Record information shows that you have four violations between 1966 and 1968? A. It doesn't indicate on here what it is, and I can't admit to something that I don't know what it is for.

Q. You don't remember the other violations that are shown on the form of the Texas Drivers Licensing Record Bureau? A. No, sure don't.

The Court: Speak up, Mr. McCrimmon, so I can hear you.

A. (By the Witness) No, I sure don't, not offhand.

Q. (By Mr. Schuler) When you asked Mr. Sipel for a road job on April 12th, 1970, did you have any reason to believe that there was an opening for a road driver at that time? A. (By the Witness) Not especially, no.

Q. And Mr. Sipel didn't tell you there was an opening for a road driver, did he? A. No.

Q. Did you ever have any conversation with Mr. Sipel after that about a road job? A. Well, after we talked he said

he'd check with me in a few days, and I will contact Lubbock and let you know.

[242] The Court: He will do what, now, said check with me in a few days?

A. (By the Witness) In a few days he will contact Lubbock and let me know. I believe that this was a Tuesday and I spoke with him again Monday and he said, well, I wrote the letter and, you know, they confirmed my statement. They said that is something that is just not done.

Q. (By Mr. Schuler) Did you ever ask Mr. Sipel for a road job at any time when you believed that there was an opening for a road driver? A. (By the Witness) No. These were the only two times I spoke to him about it.

Mr. Schuler: No further questions.

Mr. Wells: No questions.

The Court: Anything further from the government?

Redirect Examination

By Mr. Contreras

Q. Mr. McCrimmon, you were shown an accident violation record. I'd like to know, is this also entitled T.I.M.E.-DC, Incorporated Accident Violation Record? A. Yes.

Q. You will have to answer affirmatively. **[243]** A. Yes, yes.

Q. Now, is this signed by yourself? A. Right.

Q. And what is the date of that signature? A. Eleven, twenty-four, '69—I mean, I'm sorry, 9/3/69.

Q. Now, do you recall whether or not this was filled out and submitted to the company? A. First of all, this first one here, my car was parked on the street with my four-way

blinkers on, and a car ran into me from behind. That's not a chargeable accident. I wasn't even in the car.

Q. All right. But this was submitted to the company and filled out by yourself and submitted to the company. A. Yes.

Mr. Contreras: No further questions.

The Court: Let me ask Counsel for the government now a question about Mr. McCrimmon.
Why isn't he on your list?

Mr. Fenton: Why isn't he on our list?

The Court: Why aren't you asking some individual relief for him?

Mr. Fenton: Mr. McCrimmon is a member of a class, Your Honor. We are asking for class relief.

The Court: I understand that, but why is **[244]** it you're asking relief for—what is the difference between Mr. McCrimmon and Mr. Holley? My impression is he might even have a stronger case.

Mr. Fenton: Well, Your Honor, we have a series of classes of affected people——

The Court: I recognize that.

Mr. Fenton: ——in this case, and one of the classes are the black city drivers at the Dallas terminal, of which Mr. McCrimmon is one. Now, a class of individuals like these, we are asking they be permitted to bid on vacancies in line driver jobs as they come up, and if they are found qualified for these jobs, to take those jobs on the basis of the seniority they have as city drivers.

The Court: Yes, sir. But that is not my question. I know all that.

Mr. Fenton: Your question is why is he not listed as an individual?

The Court: Why isn't he seeking individual relief? I'm not saying he is entitled to it, I'm just trying to understand your distinction. I recognize him as a member of this class, but here is a man that is employed by T.I.M.E. and made an application and in his testimony he said, well, it's just not our policy to transfer you.

Why is it you're saying he shouldn't have a seniority date on April 12th, 1970, and back pay from, well, from Exhibit **[245]** 146, according to your theory, he would be entitled to back pay from June 11th, [illegible] when they put on another driver, long road haul driver.

Mr. Fenton: Well, Your Honor, as you pointed out last night, quite correctly, at the close of yesterday's session, in many instances individual discriminatees are also members of a class, and we again think correctly that the government is entitled to show individual instances of discrimination——

The Court: I agree with that.

Mr. Fenton: ——from a class, and certainly, we are asking for individual relief for Mr. McCrimmon and others like him as they are within these classes, and what we propose to do——

The Court: In a class action you would afford him relief.

Mr. Fenton: That's right. And along with our proposed findings of fact and proposed conclusions of law, we will set forth these various classes, the exact kind of relief that we think is proper.

The Court: Well, you're saying that you are going to ask for a remedy saying everybody that is in the same class as Mr. McCrimmon be given seniority from the date shown under certain circumstances, something to that effect.

Mr. Fenton: Be allowed to bid on vacancies **[246]** as they come up in order of their seniority, if they are found qualified for these jobs by the company, be permitted to file them.

The Court: You're not asking for any back pay for this fellow?

Mr. Fenton: Yes, we are.

The Court: Thank you. That answers my question. Mr. McCrimmon, I believe that's all the questions they have of you.

All right. Let's have another witness.

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[253] RICHARD STINSON,

called as a witness at the instance of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Fenton

Q. What is your name? A. Richard H. Stinson.

Q. Your address, Mr. Stinson? A. 1927 Eighty-Second Avenue, Oakland, California.

Q. Your race? A. Afro-American.

Q. What is your education, Mr. Stinson? A. High school, one year of college.

Q. Have you ever applied for a job at T.I.M.E.-DC? A. Yes, in '69 when I first heard about the so-called merger.

Q. What kind of a job did you apply for? A. Line driver, sir.

Q. What terminal of the company? A. At the LASME terminal.

[254] Q. What does that mean? A. Los Angeles-Seattle Motor Express.

Q. Where is that located? A. On Ferry Street.

Q. LASME, or Los Angeles-Seattle Motor Express, was that one of the predecessor companies of the present T.I.M.E.-DC? A. Right.

Q. Do you recall about when you applied for a line driver's job at the company? A. Oh, I would say about the third month of '69.

Q. Did anyone else accompany you? A. Yes. A friend of mine, truckdriver, named William Burroughs.

Q. What was his race? A. Afro-American.

Q. Was he also interested in a line driver's job? A. Right.

Q. Who did you talk with when you went to the terminal? A. It's been a long time. I don't know the name, but we got through the receptionist to the so-called line driver supervisor, and we talked to him. I don't know his name. It's been a long time.

Q. What did you ask the receptionist? A. Well, the local that I am in, 468, we don't have a hiring hall procedure, so it's up to you to go out and seek **[255]** your own jobs, so we told the receptionist that we were members of 468 applying for line positions, and she automatically directed us to the line driver supervisor.

Q. Do you recall the line driver supervisor's name, Mr. Stinson? A. No, sir, I don't.

Q. What did you ask the line driver supervisor? A. We had heard about the so-called merger, and that—the possibility that they might need some line drivers, and we were—would like to apply for the position.

Q. Were you given an application blank to fill out for the job? A. No. We were—we were gave a story like we—we was given a story something like they had more drivers than they had equipment, you know. In other words, they had freight, but they wasn't able to move it, what have you, something like this, to this effect, but anyway, we didn't get an application.

Q. Did you after this time inquire again at T.I.M.E.-DC about a line driver's job? A. Yes, in the year of '71.

Q. About what month or what period in 1971? A. Well, I knew that from the word around town that T.I.M.E.-DC was hard to penetrate, as far as the black man was concerned, and the union representative of 468, I asked him would he more or less be a liaison man for myself, so he said **[256]** he would talk to somebody out there. So I talked to him afterward and he said he had talked to them and built me up, what have you, so on and so forth, so I didn't get any calls or what have you. So in turn, I wrote a letter to the terminal manager to bring it to his attention, because I knew it was a definite fact that they didn't have any black line drivers out there. He did not answer my letter.

Q. Who was the terminal manager to whom you wrote, sir? A. Mr. Frazier.

Q. Do you recall about when you wrote him? A. Oh, I would say the middle of 1971, sir, somewhere along in that area.

Q. And after this time did you have any other communications with T.I.M.E.-DC? A. Well, I made a move of my own. I went out there and I talked to a Mr. Foster. He was the truck boss, so-called line driver supervisor, and I took a resume out, see, because I am aware of the problem, what have you, so far as getting an application. I know it's kind of hard sometimes, so I have made up a resume. I gave it to him. I think he was impressed, what have you. We set down and talked for—over the trucking situation, what have you, discrimination, the whole bit.

The fellow seemed to be sincere, but his hands were tied. In other words, he couldn't do anything without contacting so-called Lubbock, so he said that the big time officials were having a **[257]** meeting the end of that week in L.A., and he would have some information for me at that time.

So I was back over there again, and at this particular time he said that they had—they didn't come to any conclusion, what have you. He still didn't know if he could hire or what have you.

I was getting the message, so I called him three different times over the phone and each time it was still a stall, so I finally just gave up more or less.

Q. Were you given a written application for T.I.M.E.-DC? A. Right. He gave me an application, but I had given in turn him a complete resume. Any time he would act as though he was interested in employing me, I was going to follow up with the application.

Q. What did you have in the resume, Mr. Stinson? A. My complete background. I think it would supersede any application that any trucking company would give.

Q. What kind of background do you have with respect to truck driving, sir? A. I spent two years in the Seabees and I come out as an E-4 equipment operator.

Q. What years were you in the Seabees? A. Sixty-one to '63, sir.

Q. Is that part of the Navy? A. Right. Construction battalion.

[258] Q. Do you have an honorable discharge? A. Right.

Q. What kind of equipment did you operate in the Seabees? A. Oh, road and earth-moving equipment.

Q. Then, after you got out of the Seabees, what did you do? A. I worked for Mobil Oil Company as a tanker driver for four years.

Q. What years were those, sir? A. Sixty-three to '67.

Q. What kind of equipment did you drive for Mobil? A. We had truck and trailers and semis.

Q. Did you drive a diesel? A. All diesels.

Q. Did you drive for anyone after that, sir? A. I had a truck of my own for two years, sir.

Q. What kind of a truck was that? A. Five-axle forty-foot box, White Freightliner, diesel.

Q. What years did you drive on your own? A. Sixty-seven to '69.

Q. What were some of the areas that you drove in? A. I had a direct haul for Foremost and McKisson to Apton, which is out of Oakland, California, L.A., California.

Q. Where did you drive to from these locations? A. Well, I was hauling from out of Apton bringing merchandise for Foremost and hauling into St. Paul, going east into St. Paul **[259]** and Milwaukee, going west to Los Angeles or Los Banos.

Q. Now, I believe you testified that you applied first at the company in March of 1969. Did you drive trucks for any other company after that date, sir? A. Oh, yes, yes. I went to work for Acme Transportation, which is a local bulk commodity hauler. I was employed there for two years. In fact, I'd like to bring out that I fought Transcon, which was reinstated, and given three years of seniority because Transcon was so-called doing the same things. There's a lot of trucking firms that are doing that today.

Q. You spoke of Transcon. Did you apply there, sir? A. Yes. In fact, I applied there before I applied at so-called T.I.M.E.-DC, and I worked there. I pulled two trips to Chicago, and then they eliminated me, and the same fellow that they hired--well, they said there was something in my records

that they found, and I knew there was nothing in my records, but it took three years to prove this.

Q. Did you bring some kind of a lawsuit, or a complaint? A. Right, EEOC.

Q. You brought an EEOC complaint? A. Right.

Q. Did you later file a lawsuit? A. Right.

Q. That was resolved? A. Right. That is when they re-instated me three years of **[260]** seniority, and I ran a line for them from the eleventh month to the second month, and the reason that I am not with them today is because they had a change of operations. Transcon redomiciled all their Oakland line driver personnel in Omaha, Nebraska and I didn't want to move to Omaha, Nebraska.

Q. What time did you drive for them? A. I only made two trips when I was first hired in '69, then I worked for them from eleventh month, '71, to the second month of '72. I am unemployed at the present time, now.

Q. Now, when you were driving for Transcon, what kind of equipment did you drive, sir? A. Doubles. They all have——

The Court: What do you mean by doubles, two axles on the rear?

A. (By the witness) Two trailers, sir, and a two-axle tractor pulling two twenty-seven-foot trailers.

Q. (By Mr. Fenton) And a diesel tractor? A. (By the witness) Yes, sir.

Q. Have you ever had any chargeable accidents while driving a truck? A. No, sir. I am proud of it.

Q. Do you have any criminal convictions? A. No, sir.

Mr. Fenton: That's all.

[261] **Cross-Examination**

By Mr. Schuler

Q. Mr. Stinson, I didn't catch the name of the supervisor at T.I.M.E.-DC that you said you talked to in 1971. Was that Mr. Foster? A. Yes, sir.

Q. Do you remember his first name? A. No, sir.

Mr. Schuler: I have no further questions.

The Court: All right.

Mr. Wells: No questions, Your Honor.

The Court: Anything further?

Mr. Fenton: Nothing further questions.

The Court: All right. Mr. Stinson, thank you, sir. You may step down.

Mr. Fenton: Plaintiff calls as its next witness Mr. Grady Amos.

GRADY AMOS,

called as a witness at the instance of the plaintiff, having been first duly sworn, was examined and testified as follows:

[262] **Direct Examination**

By Mr. Fenton

Q. What is your name? A. Grady A. Amos.

Q. What is your address, Mr. Amos? A. 2401 Main Street, Northwest, Atlanta, Georgia.

Q. What is your race? A. Negro.

Q. Where are you employed? A. T.I.M.E.-DC, Incorporated.

Q. In what city, sir? A. Atlanta, Georgia.

Q. What is your job there? A. Tractor-trailer.

Q. Is that also known as a city driver, sir? A. Yes.

The Court: Also known as what? I didn't understand that.

Mr. Fenton: A city driver.

Q. (By Mr. Fenton) What sort of equipment do you drive? A. (By the witness) I drive the same equipment that the line drivers drive. Forty-foot five-axle diesel tractor.

Q. Do you have occasion to drive on the interstate system around Atlanta? A. Yes, I do.

[263] Q. When were you first employed by the company, Mr. Amos? A. I was employed May 1, 1950, which was Southeastern T.I.M.E. purchased Southeastern Motor Truck Line.

Q. So when you were originally employed, the company was called Southeastern. A. Southeastern Motor Truck Lines.

Q. Did T.I.M.E. Freight later take over Southeastern? A. Yes, sir.

The Court: What was that date again?

A. (By the witness) My date of employment?

The Court: Yes.

A. (By the witness) May 1st, 1950.

The Court: Fifty.

A. (By the witness) Yes, sir.

Q. (By Mr. Fenton) What was your first job with the company? A. (By the witness) A helper on a tractor and trailer.

Q. Your next job? A. Tractor and trailer.

Q. About how long after you hired by the company did you become a tractor-trailer driver? A. Approximately between six and nine months.

Q. Were you ever in the service, Mr. Amos? A. Yes, I was.

Q. What branch? **[264]** A. United States Marine Corps.

Q. When was that, sir? A. December, '53, through December—I'm sorry, December '51 through December '53. Two years.

Q. You took a leave of absence from the company to go into the service, is that right? A. Yes, sir.

Q. Did you have occasion to drive while you were in the Marines? A. Yes, I did.

Q. What did you drive there? A. I drove pickups, Jeeps, pickups, gas and diesel semi-tractor and trailers.

Q. Did you have an honorable discharge from the Marines? A. Yes, I did.

Q. Mr. Amos, did you ever apply for any extra road driver runs at T.I.M.E.-DC, or T.I.M.E. Freight as it was known then? A. Yes, I did.

Q. Do you recall approximately when this was? A. It was approximately 1957. It could have been '58.

Q. To whom did you apply? A. I applied to Mr. Wylie Allison, terminal manager.

Q. Were there any other persons who were with you when you applied? A. Yes, there was, or were, rather.

[265] Q. Who are these people, sir? A. Forrest Jones, Roosevelt Derden and Fletcher Foster, which is not with the company. There was Roosevelt Tucker and Joseph Amos and myself.

Q. Were these other persons also city drivers there at Atlanta? A. Yes, they were.

Q. All city drivers working for T.I.M.E. Freight. A. Yes.

Q. Were they all black? A. Yes.

Q. Now, what did Mr. Allison tell you when you inquired about these extra road runs? A. He told us he would have to check the home office in Lubbock, Texas, and I waited two weeks and went back to him and asked him again and he never did tell me what Lubbock said. He told me we would get poor accommodations. We would be forced off the road by other drivers, which was the white drivers, and they would be a bad risk for the company; the company couldn't stand this loss.

Q. Now, at the time you asked Mr. Allison about these extra road runs, were there any white city drivers at the T.I.M.E. terminal making such extra road runs? A. Yes, they were.

The Court: This was in 1957 or '67?

[266] A. (By the witness) 1957 and '58.

The Court: The home office of the company was in Lubbock at that time?

A. (By the witness) Yes.

Q. (By Mr. Fenton) Who are some of the white city drivers who were making extra road runs at that time? A. (By the witness) Jack Morgan, W. A. Boggs, Ernest Ferguson, Freddie Miller, Jessie Goodman, Horace King and Jack Morgan.

Q. Did any of these white city drivers ever transfer and become line drivers at the Atlanta terminal? A. Yes, they did.

Q. Do you recall who these were? A. That was Jessie Goodman, C. H. Butler, Freddie Miller, Ernest Ferguson and Freddie Humphries.

Q. Were you aware of any black city drivers who ever made any extra road runs from the terminal? A. No, there was never any blacks made any road runs.

Q. Now, after your inquiry to Mr. Allison, did you ever again inquire about making extra road runs at the Atlanta terminal? A. Yes, I did.

Q. To whom did you inquire the next time, sir? A. I applied to Mr. George Mise who was the operations manager.

[267] Q. Do you recall when you re-inquired of Mr. Mise about that? A. Yes, sir. It was '66 or '65.

Q. What did Mr. Mise say? A. He told me the same thing that Mr. Allison said. He would have to check the home office and he would let me know as soon as he got a reply, but he never did. I waited again approximately two weeks and went back and asked him again and he said he was still waiting for an answer.

Q. Now, the time you asked Mr. Mise about extra road runs, were any white city drivers at that terminal making these extra road runs? A. Yes, there were.

Q. Did you ever tell Mr. Mise that you would not accept an extra road run to Verona, Mississippi? A. No, I didn't.

Q. Did you ever tell Mr. Allison, the terminal manager, that you would not accept an extra road run to Verona, Mississippi? A. No, I didn't.

Q. Are there any black road drivers at the Atlanta terminal with the company? A. No.

Q. To your knowledge, have there ever been any? A. No.

Q. Do you have any criminal convictions? **[268]** A. No.

Mr. Fenton: That's all.

Mr. Schuler: May I have just a minute, Your Honor?

The Court: Yes, sir.

Cross-Examination

By Mr. Schuler

Q. Mr. Amos, in 1957 or 1958, when you talked to Mr. Allison, what was the inquiry that you made at that time? A. I asked Mr. Allison I would like to make some of the extra road runs and he told me, said, well, in fact, there was a group of us went in——

Q. Well, all right. You have answered the question. You inquired about extra road runs, is that correct? A. Yes.

Q. And when you talked to Mr. Mise, what year was that you talked to him? A. It was approximately '65 or '66. I was thinking it was '66, but——

Q. All right. Did you also make an inquiry to him the same as you did to Mr. Allison for extra road runs? A. Yes, I did.

Mr. Schuler: Thank you. No further questions.

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[281] **ERSKIN LYTLE,**

called as a witness at the instance of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Fenton

Q. What is your name? A. My name is Erskin W. Lytle, Jr.

Q. Your address, Mr. Lytle? A. 3503 Albian Street, Nashville, Tennessee.

Q. What is your job? A. I am a compliance examiner for the United States Postal Service.

Q. How long have you held this job? A. Since 1965.

Q. What are the responsibilities and duties in that job? A. Under the President's Executive Order 11246 and 11375, we have the compliance responsibility for the trucking industry, the railroad industry and the bus companies. Our duties are to schedule regular compliance reviews in these industries, and to see whether or not, and to assist if they are not, these companies to practice equal employment opportunity.

[282] Q. Now, as part of your compliance reviews, did you have occasion to conduct compliance reviews at the Nashville, Tennessee facility of T.I.M.E. Freight, Incorporated? A. Yes, sir.

Q. Do you recall when these compliance reviews took place, sir, generally? A. The first time was about August, 1966, and then again about December, 1966, and I believe we made one in 1967.

Q. Who was the terminal manager at the Nashville facility, sir? A. Mr. K. Neal Gibbs.

The Court: Gibbs?

A. (By the witness) Gibbs.

Q. (By Mr. Fenton) Did you discuss that terminal's compliance posture with Mr. Gibbs? A. (By the witness) Very definitely. After we had the regular amenities that we use when we go in, we did go into discussing with him in his program of equal opportunity, and because of certain items that we asked him to have ready for us when we got there, we were able to take a fast look at the compliance posture of the facility and then we did discuss the total program with him.

Q. What did Mr. Gibbs tell you, sir? A. One of the things that we did notice in the compliance posture was that the minorities that were working at this **[283]** facility were all relegated to one category.

Mr. Schuler: Now, Your Honor, I'm going to move that that question and answer be stricken.

The Court: Let's find out the basis of his knowledge of it, first, before I rule on your objection.

Mr. Schuler: I believe the question was what did Mr. Gibbs tell him and he has stated a conclusion now as to what he found.

Mr. Fenton: I believe, Your Honor, his statement is just an introduction to his——

The Court: Well, go ahead and let me reserve my ruling. We want to keep this within its proper bounds if possible, and I will permit you to go ahead at this time. Overrule the objection at this time.

Q. (By Mr. Fenton) Proceed. A. (By the witness) All right. Mr. Gibbs told me that they had never considered hiring minorities in any other category except the menial type.

Q. Do you recall what job category the minorities were in there, sir? A. Servicemen.

Q. Do you recall approximately when Mr. Gibbs told you this? A. It was during the—it was during the initial review.

The Court: About when was that, middle of '69?

[284] A. (By the witness) Oh, no, no. This was '66.

The Court: In 1966?

A. (By the witness) '66.

Mr. Wells: I am sorry. I didn't hear when.

The Court: 1966.

A. (By the witness) Sixty-six.

The Court: Could you give a little closer date, or do you have that?

A. (By the witness) I visited them twice in 1966. The first time I think it was August and the second time I believe it was December.

Q. (By Mr. Fenton) Did you have occasion to reach an oral understanding or an oral agreement with Mr. Gibbs with respect to the minorities who were employed at that terminal? A. (By the witness) Yes.

Q. What was that, sir? A. I asked him if he would consider and would he agree to re-evaluate the minorities that were presently working at the facility, and at the same time seek minorities to work in all job categories at this facility, and he agreed to do so.

Q. And did you later discuss this agreement with Mr. Gibbs? A. During the second visit I did discuss it with him, and he told me at that time that he had been informed by Lubbock just to let that agreement alone, but I had not been notified **[285]** of that.

Q. You say he was informed by Lubbock just to let that agreement alone? A. Yes.

Q. Could you elaborate on that, sir? A. Well, in our—during the review and in all of our reviews we do try to bring about agreements in which we ask them if they will do this, will you agree to do this, or whatever it is, and at that time the two that we asked was that he would re-evaluate the minorities that appeared to be relegated to one category, and then second, take affirmative action in seeking minorities to work in all categories, and he agreed to do so when I did ask him about it, and he told me about it. Then I didn't know anything about it, but I still continued to ask him if he would if it became possible.

Q. Right. And when you had your conversation with him after you entered into this agreement or understanding, did he tell you that the agreement would be effectuated, sir? A. He told me that. He did.

Q. Yes. And did he tell you anything after that with respect to that agreement? A. He only told me that Lubbock had told him to let that agreement alone.

Q. And what did you understand him to mean by that?

Mr. Schuler: Your Honor, I object to that **[286]** question. I don't believe this witness' understanding is material to the issues in this case.

The Court: Well, I don't think it is necessary to ask the question. I think the answer he has given is obvious, so I am going to sustain the objection.

Q. (By Mr. Fenton) Well, let me ask you this: After Mr. Gibbs told you that, was that agreement carried out, sir, to your knowledge? A. (By the witness) It was not carried out. The minorities that were working continued working in that category and I do know that they were not called in for any type of re-evaluation.

Mr. Fenton: No further questions.

Cross-Examination

By Mr. Schuler

Q. Mr. Lytle, I believe you said your last contact with Mr. Gibbs was in December of 1966? A. I said the last review, but I also said that we went there again in 1967.

Q. And about when in 1967 was that? A. I believe it was the early part or possibly the middle of 1967. I'm not sure, because there were three of us that went in at that time.

Q. Have you had any contact with Mr. Gibbs or anyone else there since the early or middle part of 1967? **[287]** A. Not personal, not personal contact with him. I have had contact by the telephone. They have called me once or twice on the telephone, and he has written me one or two letters since that time.

Q. Are you aware of any contacts that have been made by the T.I.M.E.-DC terminal in Nashville since the early part of 1967 to minority referral sources? A. On one of his calls he stated to me that he had made contact and was in need of some

minority employees, or in need of employees; that he wanted to hire a minority.

Q. You said that the agreement that you reached with Mr. Gibbs was not carried out. Are you aware that there have been contacts since 1967 by the Nashville terminal with minority referral sources and efforts made to secure additional minority employees? A. I do know that since that time letters have been written to some minority referral sources.

Q. And you received copies of some of those letters, did you not? A. Yes.

Q. When you first talked to Mr. Gibbs as to whether he had minority employees in categories other than servicemen, did he tell you that they had never considered minorities for those other categories, or did he tell you that he had never had minority applicants for those other categories? **[288]** A. He told me they had never considered minorities for any other category except service.

Q. Did you follow up and ask him if he had had minority applicants for those other categories? A. Very definitely.

Q. Did you have any discussion as to when there had been minority applicants, or what categories of work they had sought? A. We discussed it, yes, and it was brought out at that time that in reality there were no minorities working under Mr. Gibbs. All of the minorities were working in the mechanic shop under Mr. Burns, so he had not made any effort to hire minorities in his shop at all.

Q. Well, that is your conclusion, Mr. Lytle. A. That is the——

Q. Isn't it your conclusion that he had not made the effort? A. He discussed it with me. He told me that.

Q. Now, did you get into any discussion with Mr. Gibbs as to whether minorities had applied for jobs and had been tested as to qualifications for those jobs? A. No, sir.

Q. You didn't get into the qualifications? A. I asked him about those things, but he said it had not been done. He told me that Mr.—Mr. Gibbs told me that it had not been done.

[289] Q. There had not been any qualifying of potential applicants? A. Yes, sir.

Q. Did Mr. Gibbs state anything further to you as to any reasons there might have been for not hiring minorities in categories other than servicemen? A. They hadn't considered them for any other category.

Mr. Schuler: Thank you. No further questions.

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[314] The Court: Thank you, Mr. Henry.

Now, sir, anything else at this time before we recess until Tuesday morning?

Mr. Fenton: Your Honor, our next intention would be to start with the depositions, and it is entirely acceptable to us if you want to wait until Tuesday for that.

The Court: I would prefer to do that. I think this is a natural break in this trial, if no one else has any objection.

Now, let me say that I have gotten the numbers of these exhibits, and that these are the agreed summaries that I have here. I intend and understand with consent and even the suggestion of Counsel that I examine and study and read these outside of open Court, which I intend to do this weekend. Did you file some more other than those that were originally sent me? The stack I have here was sent me originally by mail, **[315]** or handed me while I was at the Judicial Conference last week. Are there any more of them?

Mr. Fenton. We filed a total of nineteen, Your Honor. I don't know if you have them all there or not.

The Court: Well, I want to be sure I get them all. I have nineteen.

Now, I recognize there are other depositions, and I believe the government at the commencement of this trial indicated that you would want to present some here in open Court and then if you move into those, perhaps you can come at me later, say, look, the rest of these you can examine in Chambers, or something, so won't go into those depositions at this time. I think this is enough, or all I want to examine unless you have a suggestion to the contrary.

Mr. Fenton: Fine. Possibly an acceptable procedure in presenting the rest of the depositions, what we propose to do is identify our designations of individuals and if there are no objections by the defendant to that particular deposition and the exhibits which were identified through it, to just submit it and go into the actual reading of only those depositions, or parts thereof, where there are actual objections. We think that might speed things up.

The Court: That's what I had contemplated. Does that comport with your idea?

Mr. Schuler: Well, Your Honor, our last **[316]** meeting of a pre-trial nature, we had understood that the depositions would be read, and accordingly, we do not have a deposition-by-deposition list of the specific objections in each of the depositions. We can possibly go through and do that at least partially prior to Tuesday. The problem is that there are some questions that were asked in the depositions where we feel the witnesses made an unresponsive answer, and we had no grounds for objection to that upon the deposition record.

The Court: I understand. Let me ask you this: You are going to read some, and that is going to at least take a day, will it not, those that you intend to read?

Mr. Fenton: Well, Your Honor, we don't intend to read any, but if that is the only acceptable way——

The Court: No, no, no, no, it isn't. I just want to give Counsel time to—he's not going to read any, but you know what he's going to tender, don't you?

Mr. Schuler: Well, I assume that they will be tendered in the order that they were taken. First, the San Francisco depositions, Denver and then——

The Court: I would assume he probably will go in the order that he has listed them in the pre-trial order.

Mr. Fenton: That's correct.

Mr. Wells: If Your Honor please, might I **[317]** make a suggestion as to a problem that at least we, as defendants have, unless there is some reading or at least some pinpointing, the first name that Counsel puts on this list of persons for whom he is seeking relief is a fellow named Benny Whitfield out of San Francisco. Now, Mr. Whitfield gave a deposition and as far as I'm concerned the objections, if any, will be mine, or that the union will make. I don't know what the company will make, and it might be proper just to hand you Whitfield's deposition, but I must say that as I read this top side or bottom I can't see what possible basis the government has for seeking a seniority date of February 4th, 1969.

Basically, what this deposition says is that the man applied for a job and he didn't get it. Now, when something like that came up this morning, you asked Counsel to point up just what was it that he was after, and seems to me that unless—that if they are just dumped in there wholesale, we are just shooting blind from the defensive side. We don't know what he is after or what his theory is.

Mr. Fenton: Well——

The Court: That's understandable, Counsel. How can you remedy that?

Mr. Fenton: I will be happy to explain our theory at any time with respect to Mr. Whitfield.

Let's take him for example. He applied at that terminal——

The Court: Well, wait, let's talk about **[318]** the procedure on this.

How are we going—I can see his standpoint. Would it be helpful if when they introduced Pages 4 through 8 of Mr. Whitfield, or whoever, he states the purpose for which it is offered at that time and give you gentlemen a chance to make any objection, or you say I don't have any objection, and when we get to those that you have got some objections, then can only be ruled upon by hearing the testimony and we will just read that particular deposition.

Now, the bulk of those you're not going to have any objection to, or some of them, isn't that correct?

Mr. Schuler: I think that's correct, Your Honor.

The Court: Well, could you inform Mr. Fenton which ones you think ought to be read and which ones you think can be examined by the Court in Chambers? Do that sometime between now and Tuesday, or Tuesday morning, or do you want to work this weekend?

Mr. Schuler: Well, I think your suggestion is perhaps better, that Mr. Fenton might first advise us as to the purpose to be served by any particular deposition and——

The Court: You mean have him advise that this is offered for the proof of a certain claim in this lawsuit.

Mr. Schuler: Yes. Some of the unresponsive **[319]** answers, or the hearsay that we say exists, might not have any meaning if he is not offering the deposition for a purpose that would be served by that hearsay evidence.

The Court: Well, I think Mr. Fenton is ready in each instance to tender a deposition, tell you precisely what he is tendering it for.

Mr. Fenton: In most instances, that is true.

The Court: Could you do that?

Mr. Fenton: There are certain depositions of company officials where there are many purposes for which we tender. It would take some time to summarize all those purposes, but for those people that we are tendering depositions whom we consider discriminatees, representative of a class, certainly we could do that.

The Court: We are going to start out Tuesday and I'm going to permit Counsel for the government to tender depositions or portions thereof, and at the time it is tendered, give a short statement of the purposes, and Counsel can then make their objections and can make a request that it be read rather than examined by the Court in Chambers, and we will just go deposition by deposition like that. When you say it ought to be read, well, I think we will just have that portion of it read, but this will cut a considerable amount and give us some shortcuts.

[320] Is that going to cause any extra burden on you, Mr. Fenton? I think you indicated that you are well versed on the facts of this case.

Mr. Fenton: Well, I don't know about that. It may involve a little work this weekend, but this is an ideal environment to do it in.

The Court: You're not going to be outside swimming.

Mr. Fenton: That's right.

The Court: Let me go into another thing here.

We had a discussion in chambers this morning which was off the record, and this may look a little disjointed in the record, but I feel that there is nothing wrong with me keeping you up with my feeling in this case, because each party certainly keeps me up with their positions on the various aspects of this case.

Now, I am referring particularly to the discussion we had about a possible remedy in connection with the practice concerning the transfer from the city driver unit or classification to

the long haul or the road driver classification, and the seniorities to be afforded there.

Now, before I go further, I want it clearly understood that I don't intend to make any ruling or final decision in this case preliminary to hearing all of the evidence in the case, **[321]** but since we have had this discussion, let me say that I have examined the three cases again. I have already read them, but I read them over carefully during the lunch hour. Those cited by the government, as I understood it, supported your intention that a remedy should be afforded in this particular instance where minority groups, under the decree, would be transferred from the lower classification to the higher, city to road unit, and given preference over a transfer—any transfer that the whites might be entitled to. In other words, the blacks would go to the top of the list, even though the dates of employment and other pertinent dates or qualifications and so forth of a white might entitle him on the record to a higher classification.

In other words, just to put it bluntly here, you are asking for a decree that would, because of the past alleged historical discrimination in this area, make up for it now by giving the blacks an extra job, and my terminology would be perhaps discriminating against a white in that category.

Now, I have read those cases carefully, and I do not find that any one of those three cases, that is, the Mercury Freight Line case, the Lee Way case and the Roadway case, I don't find that any of those three cases require such a decree to be entered. In fact, I don't think they address themselves to that problem. One of them, I believe the Jones case, even expressly refused to handle certain seniority problems. I don't even know as the question was raised in those cases exactly as **[322]** it would be raised here if such a decree were to be entered. I think maybe it could be argued that even those cases do not require it. They were so broad in their language that they might permit it in the ordinary discretion. One of them specifically cited, I think

it was the Jones case, cited Title 42, 2000(e)2(j), I believe it is. That's the one, as I read it, that says two wrongs, that is, two discriminations do not make a right. That's the way I look at it.

Now, I say this, Mr. Fenton, because as I understand it, you are very firm in insisting that that is the proper remedy, and I want you to give me some more cases. You haven't persuaded me yet, so if you have some more, bring them to my attention the first of the week, will you?

Mr. Fenton: We will certainly do that, Your Honor. I refer you again to our pre-trial brief, which we submitted in this case. Now, it's true, as you have stated, that the three trucking cases, which have been decided by Federal Courts of Appeal, that is Jones against Lee Way Motor Freight, Benning against Roadway, and Witherspoon against Mercury Freight Lines, did not involve the issue of what seniority relief, if any, minorities who seek to transfer from one job classification to another, are entitled to. They involved only a no-transfer policy. However, cases in numerous other industries have indicated that seniority carry-over is the proper relief.

[323] The Court: I misunderstood you this morning. I thought you said these three cases supported that.

Mr. Fenton: No, sir. But there is a District Court case which was decided which involved a trucking company, and that is the United States against Central Motor Lines, which was decided——

The Court: That was attached to your trial brief, was it not?

Mr. Fenton: That was attached to our trial brief. So far it hasn't been reported in Federal Sup., but it soon will be. In that case the Court specifically ordered this kind of relief, and in consideration of the fact that there are numerous appellant decisions in other industries where this kind of relief has been ordered, you've got that District Court decision following those cases, and we think that this is what Title 7 requires, and that is what we are asking for.

The Court: I'm going to give every consideration to your position in that regard. I find it hard to believe that they require it. They might. About as far as I can go is that it would authorize it, but again, I am not making any decision. I just am giving you a tip as to how I feel on it.

We're going to be ready to go again, say, Tuesday at nine. Anybody got any problem with 9:00 Tuesday?

[324] Mr. Wells: No.

The Court: All right. We will go along the outline that we talked about a moment ago concerning the depositions at 9:00 in this case.

We'll stand in recess until that time.

(Court adjourned for the day.)

Lubbock, Texas, May 9th, 1972
9:00 A.M.

The Court: Gentlemen, the nineteen summary exhibits, summary of depositions exhibits, of course, are in evidence. I wanted you to know that I have now read each one of those nineteen, and will consider them as part of the evidence in this case.

Now, is the government ready to proceed?

Mr. Fenton: Yes, we are, Your Honor.

The Court: All right, sir.

Mr. Fenton: At the close of the Court session on Thursday it was agreed that plaintiff would submit a list of purposes for which it intends to offer the other depositions in evidence, and we prepared this list and furnished copies to Counsel for the defendants.

[325] The Court: Thank you. I think that will be most helpful. Let the clerk file one.

Thank you, sir.

Mr. Fenton: We tender them in evidence.

The Court: Counsel for the defendants have one, I presume?

Mr. Schuler: Yes, sir.

The Court: Well, I presume what you want to do now is go right through and just introduce these and I believe we had an understanding that you could read them if you desire, or if defendants requested that they be read at this time, either one, you would do it, otherwise, they'd just be submitted to me for my examination. Is that correct?

Mr. Schuler: I believe that is it, Your Honor. We will wait and see what the position of the Justice Department is.

Mr. Fenton: Your Honor, our position is that we will just submit the depositions rather than read them.

The Court: Well, I think I'd prefer that, but I believe I have indicated to the defendants if there is any one of these that they want to have read in Court that they can make their objections, or whatever at that time. I would permit them to so state and we will read them.

Mr. Wells: May I make an inquiry?

Your Honor will recall that not all the depositions are **[326]** offered, only specified parts as attached to the pre-trial order, and I take it that that is all that is being offered now.

The Court: That's what I would assume. Is that right?

Mr. Fenton: That's correct, just those designations which are set out in the pre-trial order from Pages 34 to——

The Court: That's the way I understood it.

Mr. Fenton: ——39.

Mr. Wells: Your Honor, the other question that I had, please, is it anticipated that the court reporter will copy those portions in the record, or what will constitute the record here?

The Court: My feeling is that officially the record will only constitute these pages that are offered. Now, as to the mechanics of it, I would expect that the Appellate Court is going to require that the court reporter copy just those portions rather than submit them the entire depositions. That's my feeling on it. I would think that if Counsel wanted to stipulate otherwise, that that might be acceptable, but right now I am just thinking that—let's just take Albert M. Lamboy, the first deposition here, I am assuming that the government will now move to have his testimony on the specified pages, whatever they are in the pre-trial order, admitted into evidence. Counsel for defendants say, well, **[327]** that's fine, we've got no objection, go ahead and I'll read it when I can. If you have an objection to it, or want it read in the record, just so state and the government Counsel will have to do so.

Now, are you prepared to do that right now, or is this going to put too much pressure on you to do it in that fashion?

Are you familiar enough with them to do it at this time, or do you want some time to examine it?

Mr. Schuler: I think we are prepared to do that at this time, Your Honor.

The Court: All right.

Mr. Schuler: I may want—there are a couple of places where we have taken depositions where I would like to confer with co-counsel for a moment. Los Angeles is one and Denver is another.

The Court: Sure.

Mr. Schuler: When we get to those, I might like to take a minute.

The Court: Let me know and we will take a recess, anything that will expedite it.

Mr. Fenton: Your Honor, I would like to make a suggestion. I don't know what Counsel for the defendants would think

about it, or if they have thought about it, but in the interest of possibly saving some money in preparing the transcript in these actions, that it would be **[328]** acceptable to the government if we just considered the depositions themselves as part of the record; that is, those designated portions, and consider the designated portions as exhibits rather than have the reporter retype that particular thing into the record.

The Court: Well, I would certainly have no objection. Isn't that something we can cross at a later point there?

Mr. Wells: In that connection, are the depositions that are before the Court, is there some marginal notation as to where you stop and where you start?

The Court: Well, I'll tell you how I'm going to handle that. When he introduces them, I'm going to have the clerk hand me that deposition and I will ask Mr. Fenton to refer to the pages so I can mark in pencil on the outside what pages and lines there are and I will have that reference to go by when I read them.

Mr. Fenton: Fine.

The Court: Now——

Mr. Wells: Well, on that basis and with that record, I would have no objection to the government's suggestion that they be treated as exhibits rather than be recopied.

Mr. Schuler: I would agree with that, Your Honor.

[329] The Court: All right. We'll just see that it is done that way.

All right. Mr. Fenton, what line and page on this Lamboy, is that the correct pronunciation of the deposition?

Mr. Fenton: Plaintiff first offers in evidence designated portions of the deposition of Albert M. Lamboy, Pages 3 through 5, and on Page 5, Lines 1 through 24. Then, Page 17, Line 16 through 25, through Page 25, Line 1 through 19.

I'd like to state at this time that concurrently with the offering of the deposition we will also offer in all exhibits which may have been identified through individual deponents which are also set out in the pre-trial order.

The Court: Now, are those exhibits attached to the depositions?

Mr. Fenton: They are not attached physically, Your Honor. They are in a separate exhibit packet.

The Court: All right. I'll have to have those, of course, for the depositions to make any order of sense, will I not, when I examine them?

Mr. Fenton: Yes.

The Court: Well, I will so do.

Mr. Wells: If Your Honor please, at the risk of delaying slightly, I wonder if Counsel will go slow enough so that we can mark our copies of the deposition as he **[330]** goes.

The Court: That's fine.

All right. Have you got the Larson deposition there?

All right. Let's go ahead. Now, if there is no objection from Counsel, those pages and lines as indicated by Counsel for the government will be in evidence, and I will examine them out of the presence of Counsel in Chambers.

Mr. Schuler: All right. And Your Honor, I suppose the easiest thing would be for us to tell you right at this time those portions of the same deposition that we want you to examine on our behalf.

The Court: All right, sir. Yes, sir.

Mr. Schuler: As we have listed it in the pre-trial order, we would like to rely on Page 32 of Mr. Lamboy's deposition, starting at Line 15, and going to the bottom of the page. And then, going over to Page 40 through Line 8.

The Court: That is 32 through 40 inclusive then.

Mr. Schuler: That's right.

The Court: Through Line what on Page 40?

Mr. Schuler: Through Line 8.

Then, again, on Page 44, start with Line 2, go through the end of that page, and inclusively through Page 54, Line 11.

The Court: All right, sir.

Mr. Wells: May I have just a moment?

[331] The Court: Yes, sir.

Mr. Schuler: Your Honor, may we be off the record a moment?

The Court: Yes, sir.

(Discussion between Court and Counsel off the record.)

The Court: All right. Now, is that all we need on the Lamboy deposition from all the parties?

All right. Let's proceed on the George Larson deposition.

Mr. Fenton: Plaintiff offers in evidence designated portions of the deposition of George Larson, Page 3 through Page 6, Line 19 on Page 6.

The Court: All right, sir.

Mr. Fenton: Then, on Page 8, beginning on Line 22 through Page 10, ending at Line 15.

The Court: Line 15?

Mr. Fenton: Right.

The Court: All right, sir.

Mr. Fenton: Then, starting on Page 11 at Line 19 through Page 14, ending under Line 17.

The Court: All right, sir.

Mr. Schuler: Your Honor, for T.I.M.E.-DC we would like to rely on Page 6, commencing at Line 20 and continuing over to Page 8, ending with Line 21; on Page 14 commencing on Line 7, continuing over to Page 19, ending with Line 11.

[332] The Court: All right, sir.

Mr. Schuler: That concludes our marking for Mr. Larson.

The Court: Anything further on Mr. Larson's deposition from anyone?

All right. Let's go to Mr. Elsner.

Mr. Fenton: With respect to Mr. Elsner's deposition, plaintiff offers in evidence Pages 3 through Page 7, ending at Line 21.

Mr. Schuler: We would like to rely on Page 10 starting at Line 20, continuing through Line 6 on Page 14.

The Court: Anything further, gentlemen, on the Elsner deposition?

All right. Bennie Whitfield, I believe, is next.

Mr. Fenton: On the Bennie Whitfield deposition, plaintiff offers in evidence Pages 3 through 18.

The Court: The defendants?

Mr. Schuler: We have nothing additional, Your Honor.

The Court: All right, sir.

Mr. Wells: Just a moment, Your Honor.

The Court: Yes, sir. If you gentlemen prefer to sit down while we are doing this mechanical work, well, feel free to do so. Whatever is most convenient for you.

[333] Mr. Schuler: It's easier to stand up for this.

The Court: All right. That's fine.

Mr. Wells: I have nothing further on Whitfield.

The Court: All right. We're ready to go to George W. Sullivan.

Mr. Fenton: On George W. Sullivan's deposition, plaintiff offers in evidence Pages 3 through 18, Line 1, and then at Page 23, beginning at Line 2 through Page 24, ending at Line 19.

The Court: All right. The defendants?

Mr. Schuler: Page 24, commencing at Line 21 and continuing to Page 31, ending at Line 13.

Let's see, yes, that is correct.

Mr. Wells: I would add to that, Your Honor, Page 31, Line 22, through 32, Line 19.

The Court: All right.

Mr. Fenton: Plaintiff next offers——

The Court: Wait a minute. There may be just a little more there.

Mr. Wells: Your Honor, please strike that conclusion. I would carry it all the way through to 35, Line 18.

The Court: All right. For the record, **[334]** I am just writing on the fly sheet of each of these depositions the pages and lines as you have designated here. I know it is repetitious to the pre-trial order, but the record will reflect that is what these notations are. I will use them as a reference when I commence the reading of these depositions themselves.

All right. Now, Mr. Edward Titus' deposition.

Mr. Fenton: From Mr. Titus' deposition, plaintiff offers in evidence Pages 3 through 6, ending at Line 23 on Page 6.

The Court: Further, I am putting two columns, one for the plaintiff and one for the defendants, as a designation so I will know which parties are tendering these portions of depositions.

Anything else from the government on that?

Mr. Fenton: That's all.

Mr. Schuler: T.I.M.E.-DC has nothing to add there, Your Honor.

The Court: That's all from the defendants then.

All right. Mr. Otis Zeno.

Mr. Fenton: With respect to Otis Zeno, plaintiff offers in evidence Pages 3 through 7, ending at Line 12 on Page 7.

Then, starting again on Page 23 at Line 23, going through Page 34, ending at Line 23.

[335] The Court: All right, sir.

Mr. Schuler: We would like to add Page 14, Lines 17 to 25, continuing over to Page 21, ending at Line 22. And also, on Page 40, commencing at Line 5, continuing through that Page and on over to Page 62, ending with Line 2.

The Court: All right. Does that complete it for the defendants of Mr. Zeno?

Reuben A. Garcia.

Mr. Fenton: With respect to Mr. Garcia, plaintiff offers in evidence Pages 3 through 9, ending at Line 19, and starting again at Page 23, line 15, and going to Page 24, ending at Line 12.

The Court: From the defendants?

Mr. Schuler: Page 24, Lines 15 to 25.

The Court: All right. Is that all from the defendants on Mr. Garcia?

Mr. Fenton: Mr. Angelo——

The Court: Mr. Roy M. Angelo.

Mr. Fenton: From Mr. Angelo's deposition plaintiff offers in evidence Pages 3 through 6, and then on Page 21, beginning at Line 16, to Page 22, ending at Line 11.

On Page 23, beginning at Line 16, going through to Page 26, ending at Line 20.

Page 34, beginning at Line 9, going to Page 42, ending at Line 22.

[336] On Page 45, beginning at Line 19 and going through Page 46, ending at Line 13.

The Court: All right, sir. The defendants?

Mr. Schuler: Page 32, starting at Line 2 to the end of the page, and ending on Page 33 at Line 12. Also——

Mr. Wells: Excuse me, Mr. Schuler. I didn't get that.

Mr. Schuler: From Page 32, Line 2 to Page 33, ending at Line 12. And from Page 49, starting at Line 22 to Page 51, ending at Line 18.

The Court: Anyone else have anything further on the Angelo deposition?

All right. Mr. Carlton King's deposition.

Mr. Fenton: On King's deposition, plaintiff offers in evidence Pages 3 through 7, ending at Line 5, and then Page 14, Lines 19 through 23.

The Court: From the defendants?

Mr. Schuler: We have nothing further to add there, Your Honor.

The Court: Mr. Wells, do you have anything?

All right. I believe that takes care of the San Francisco depositions, does it not?

Mr. Fenton: It does, Your Honor.

[337] Mr. Wells: If Your Honor please, it may slow down a little bit, but we have just received this purposes for which they are introduced this morning, and I would like at the end of each city five minutes to check that against what is here.

The Court: Let's catch up as we go along. I want to say I recognize the voluminous and detailed work the attorneys have done in this matter, and I assure that I intend to take advantage of it by reading these very carefully. You've taken all of the chaff out of it and it's going to be most helpful.

I'll tell you what, let's take ten minutes and you can look at Denver while you're at it. I've got a phone call that needs to be made and let me tend to that.

When you gentlemen have had a chance to examine San Francisco and Denver, well, send word to the bailiff.

(Recess)

The Court: All right. Gentlemen, let's proceed. I believe the next deposition is Roy Wilson, Roy M. Wilson in Denver, right?

Mr. Schuler: Your Honor, if we might, I'd like to go back for a moment. I saw a typographical error as to the deposition of George Sullivan in San Francisco.

The Court: All right, sir. What page?

[338] Mr. Schuler: I believe it is Page 24. Let me check that. Now, let's see, I did find one. I'll have to come back to it. That's not the correct page. As we get into the depositions for Denver and Los Angeles, we are going through to mark the specific objections as to a number of them, and that was the reason for the delay during the recess.

Generally speaking, there are many statements in these Denver and Los Angeles depositions, particularly, and generally, throughout all the depositions as to the opinion of the deponent as to the reputation of T.I.M.E.-DC in the minority communities, and we would make a general objection as to every such reference in every deposition, since it's obvious that the person being deposed is speaking for himself and has not been qualified to give an opinion for the entire community.

The Court: Now, what you're doing—saying here is that you have got these witnesses, deponents, who are employees of

T.I.M.E. and they have been asked their opinion as to the representation of this employer concerning employment of minorities, and they give such an opinion, and there is no qualification, they have made no study or have any expertise in that particular field.

Mr. Schuler: That's correct. And it is their personal opinion and it is doubly suspect because many of the people who are making the statements have made individual charges of discrimination against T.I.M.E. They are either **[339]** individual discriminatees or have filed an EEOC charge or are listed as members of a class of discriminatees.

The Court: Let me hear from the government and see why they think such testimony is admissible.

Mr. Fenton: Your Honor, with respect to those particular deponents on which we are offering this testimony, they were asked as a foundation, as a member of the black community or as a member of a Mexican-American community, what is the reputation of T.I.M.E.-DC for hiring blacks or for hiring Mexican-Americans, so the foundation was laid. Secondly——

The Court: Wait a minute. What kind of foundation is laid there? I don't follow you.

Mr. Fenton: That they are a member of a minority community.

The Court: That makes them an expert?

Mr. Fenton: Your Honor, in this particular area for this particular purpose, they are expert witnesses. They are testifying as a member of a minority community.

Now, there are many cases under Title 7 which hold that the reputation of the defendant is admissible for purposes of showing its compliance or non-compliance with Title 7.

The Court: That's not the point, whether the reputation is admissible. It is the character of the witness himself as being

qualified to give the reputation is the point made by Counsel for the defendant.

[340] Mr. Fenton: That's right. The foundation was laid, i.e., that is they were asked as a member——

The Court: All right. You're saying reputation is admissible and that the witness being a member of a minority race is entitled to give his opinion as to that reputation.

Mr. Fenton: That's correct.

The Court: All right, sir. Anything further?

Mr. Fenton: I could cite some cases, Your Honor.

The Court: Whereby being a member of a minority race you are qualified to give an opinion in evidence?

Mr. Fenton: That's correct.

The Court: Let me have them. Let me just have the——

Mr. Fenton: Excuse me a moment. Let me get some of those cases.

The Court: It's, of course, contrary to the general rules, but we are in a new field of law. I am willing to look at the cases.

Mr. Schuler: Your Honor, while Mr. Fenton is getting those case citations, I would like to take issue with his argument that foundation was laid in each case. It is my recollection from the depositions that a foundation was **[341]** not laid in any case that I can recall, and I have taken at random the deposition of Edgar Cornelius Rudison in Los Angeles, and on Page 11 there is a question, "That is the same equipment that road drivers drive," and the answer, "Right." Then Counsel goes right into the reputation question with this question: "Mr. Rudison, what is the reputation of the company in the black community with respect to hiring blacks," and the answer is, "I would say that it has been poor."

There is no foundation laid as to Mr. Rudison even living in the black community or that he has made a study or that he is in any way qualified to give such an opinion.

The Court: Do you agree with his proposition of law that as long as the witness is a member of a minority race he is qualified to give expert opinions?

Mr. Schuler: I don't agree with the legal proposition, and I don't agree with Mr. Fenton's statement factually that a foundation was laid.

The Court: All right. Let me have his cases and I'll reserve the ruling on this. I'm going to go ahead on the procedure of tendering these into evidence and I'll rule on it later.

Mr. Fenton: Your Honor, the appellant case that I'd like to cite to the Court is United States against Sheet Metal Workers Local 36, and that is the case which was decided by the Eighth Circuit in 1969.

[342] The Court: What is it, do you have——

Mr. Fenton: I'll have that in a minute.

The Court: All right. Would it be helpful if we just—Do you find it there?

Mr. Fenton: That is in 416 Fed. 2d 123.

The Court: All right. Would you get that volume, 416 Fed. 2d.

Mr. Fenton: Then, I'd like to cite——

The Court: Wait a minute.

Now, this is on the proposition of an expert witness. I want to focus on the point here.

Mr. Fenton: This is on the proposition that reputation evidence is admissible.

The Court: Well, that is not the point, Counsel, so don't hand me a bunch of these cases that are straying off the point. The point is may a member of a minority race, does that make him per se qualified as an expert to give an opinion.

Mr. Fenton: Well, Your Honor, I can tell you from reading the transcript of certain cases——

The Court: I want the cases.

Mr. Fenton: ——that this occurred in those cases. Now, that particular——

The Court: What case do you have that you want to cite to me as a proposition——

[343] Mr. Fenton: Morrow against Kisler.

The Court: What is the citation?

Mr. Fenton: It's not reported yet in Fed. Sup., Your Honor. I would have to——

The Court: Bring me 416. If it upholds it, I'll sustain it. Otherwise, I'm going to use that case. That's the only one, U.S. versus Sheet Metal Workers?

Mr. Fenton: In Morrow versus Kisler, which was a suit against the officials of the State of Mississippi over alleged discrimination of race in the Highway Patrol. Black witnesses were put on to testify as to this very thing, and objections were raised and these cases were cited to that Court. That is a Federal District Court in the Southern District of Mississippi, Judge Nixon presiding, and Judge Nixon permitted that kind of testimony. And also in the case of NAACP and United States against Allen and Frazier, which is alleged discrimination because of race against the officials of the Alabama Highway Patrol, and the case was decided by Judge Johnson in March of 1972. The same issue was raised and Judge Johnson permitted members of the black community to testify as to the reputation of the Alabama Highway Patrol for hiring blacks in the black communities.

The Court: This is an employment case?

Mr. Fenton: That's correct.

The Court: You don't have a citation on **[344]** it? That's just a recent case?

Mr. Fenton: Both recent cases, Your Honor. To my knowledge, they haven't been reported in Fed. Sup., but I can furnish our——

The Court: Well, let's take a look at the 416 Fed. Sup. case. Have you got a particular page where I can go right to it?

Mr. Fenton: If I can find my copy again, Your Honor.

Your Honor, if I could refer you to Page 132 of that decision, and to the first paragraph, the Court there is discussing the case before it, comparing it with other Title 7 cases. The Court says, "We recognize that each of the cases cited in Note 15 to support our position can be distinguished on the ground that in each case a number of known members of a minority group had been discriminated against and after the passage of the Civil Rights Act. Here, we do not have such evidence, but we do not believe that it is necessary. The record does show that qualified Negro tradesmen have been and continue to be residents of the area. It further shows that they were acutely aware of the locals' policies toward minority groups. It is also clear that they knew that even if they were permitted to use the referral system and become members of the union, they would have to work for at least a year before they could move into a priority group which would assure them **[345]** reasonably full employment. In the light of this knowledge, it is unreasonable to expect that any Negro tradesman working for a Negro contractor or a non-construction white employer would seek to use the referral systems or to join either local."

The Court: Yes, sir. What is the point?

Mr. Fenton: The Court there is giving explicit approval to reputation evidence.

The Court: Where is one word, one sentence, one phrase, that says anything about reputation evidence in what you just read to me, Counsel?

Mr. Fenton: It says that the blacks were acutely aware of the policy of the unions.

The Court: I don't dispute that. We are not talking about what they were aware of. We're talking about what their opinion was as to a reputation.

Mr. Fenton: Well, Your Honor, that seems to me clearly to be——

The Court: Well, Counsel, I'm going to sustain it, the objection. I'll read the deposition, of course, and anything on opinion evidence that doesn't have a proper foundation, the evidence will not be considered.

Mr. Fenton: Your Honor, we'd like to make a formal proffer of all that kind of evidence.

The Court: All right. You may write it and file it with the clerk.

[346] Let's go.

I thought you had a case on point, Counsel. I'm disappointed.

Mr. Schuler: Your Honor, this might be an appropriate time to raise another general type of objection that's going to come up in the Denver depositions, and the Los Angeles depositions particularly.

The Court: All right.

Mr. Schuler: And in many other places.

The Court: My ruling was I am going to read these depositions in full, but I will exclude those that have opinion evidence without the proper foundation being laid for the witness to give that opinion evidence.

Excuse me. Now, go ahead, sir.

Mr. Schuler: There is a great deal of testimony in the depositions that is objectionable, both because it relates to incidents of alleged discrimination prior to the effective date of the Act on July 3rd, 1965, and also, because it is generally remote in time, and there are numerous instances of alleged activities in 1955, '57, and so on, that we say generally are too remote.

And secondly, the purpose of the Act indicated that there must be a showing of the discrimination after July 2nd, 1965, so it is objectionable on two grounds.

The Court: Now, I believe this objection **[347]** was raised earlier in the trial and I ruled then that discriminatory acts prior to the effective date of the Act can be considered by the Court to show a pattern that is perpetuated by policies that are being carried at this time, so I am going to overrule that objection as to remoteness. I'm going to let that go to the weight of that evidence, of course.

Mr. Wells: Will it be necessary for us to point out each individual? We understand Your Honor's ruling, but if there comes, as there will, some back in 1952, twenty years ago, or '55, seventeen years ago, then a hiatus for sixteen years when nothing happens, do we point that out to you on the record, or may we have our objection to those.

The Court: You may have a running objection to that. I know exactly what you're talking about. In some of these summaries, they were very remote, and to me, that goes to the weight to be given to that rather than its admissibility. I will just consider that as the trier of the facts.

Anything else you want to bring up before Mr. Fenton continues with the tendering of these depositions?

All right, sir. Let's go. We are down to Mr. Roy M. Wilson, I believe.

Mr. Fenton: Correct.

The Court: And by the way, that case that you cited me, Mr. Fenton, was Fed. 2d, 416 Fed. 2d., not Fed. Sup.

[348] Mr. Fenton: Yes, Your Honor.

With respect to Mr. Wilson's first deposition, plaintiff offers in evidence Pages 1 through 59, Line 22, and then Page 62 beginning at Line 5 to Page 71, and then Page 76, beginning at Line 5 through Page 77, Line 19. And then Page 83, beginning at Line 4, through Page 84, ending at Line 22.

The Court: Line 22 on the last one?

Mr. Fenton: That's correct.

The Court: All right.

Mr. Schuler: We have nothing to add to that, Your Honor.

The Court: All right. That takes care of Mr. Wilson.

Mr. William E. Franzen.

Mr. Fenton: Pardon me, Your Honor. Mr. Wilson had a subsequent deposition.

The Court: Have you got that there so I can place it together, please?

Mr. Wells: If Your Honor please, on Mr. Wilson's initial deposition——

The Court: Yes, sir.

Mr. Wells: ——Counsel stopped at 77, Line 19, and picked up at 83-4. I would include that 77-20 through 83-3.

The Court: All right, sir.

[349] Mr. Wells: Just a moment. That's all. Thank you.

The Court: Now, we are looking for the supplemental deposition of Mr. Wilson. I don't have that in front of me here.

What is the purpose of this supplemental deposition?

Mr. Fenton: Mr. Wilson in the supplemental deposition is identifying markings that were made on a exhibit and if the original cannot be found, perhaps we can use that copy.

The Court: I have your copy. Let me place it for the purposes of my examination, then you can retrieve it out of the record later.

Mr. Fenton: Fine. It is acceptable with Counsel that if the original cannot be found that we can just copy those eight pages and substitute it?

Mr. Schuler: That's acceptable.

The Court: All right.

Mr. Fenton: With respect to Mr. Wilson's continued deposition, plaintiff offers in evidence Pages 1 through 8.

Mr. Wells: And defendant unions submit Mr. Mullinax's examination beginning Page 9, Line 5 through the end of Mullinax's examination, Page 11, Line 4.

The Court: All right. Now we go to Mr. **[350]** Franzen, I believe, next.

Mr. Fenton: From Mr. Franzen's deposition plaintiff offers in evidence Pages 1 through 29.

The Court: All right.

Mr. Schuler: Nothing on behalf of the company, Your Honor.

The Court: Next is Sims, then.

Mr. Wells, if I'm going too fast, I don't mean to, let me know.

Mr. Wells: Thank you.

The Court: All right. Mr. Sims.

Mr. Fenton: On Mr. Simms' deposition, plaintiff offers in evidence Pages 1 through 14.

Mr. Schuler: Your Honor, we have some objections on this exhibit—on this deposition.

The Court: All right, sir.

Mr. Schuler: On Pages 3 and 4 there are matters of hearsay, starting with Line 23, and this is also a conclusion on the part of the witness, starting with the word, "Well, truck driving to her was almost like being hit in the face, I guess", and continuing over to the end of Line 1 on Page 4.

The Court: Well, a conclusion as to what she said to him? You consider that—this is an employee of T.I.M.E., I gather.

[351] Mr. Schuler: He is concluding as to what an employee of the unemployment commission——

The Court: Oh, oh.

Mr. Schuler: ——was saying and what her reaction was.

The Court: Excuse me. I thought that was an employee of T.I.M.E. Let me hear from the government on that.

Mr. Fenton: Your Honor, we have no objection to that being removed. That's Line 23 through 25 on Page 3 and——

The Court: That will be omitted through Line 1 on Page 4. All right, sir.

Mr. Schuler: Also, on Page 6, well, I guess you have already ruled generally about reputation. There was a statement on Page 6 about reputation.

The Court: Yes, sir, I have made my ruling.

Gentlemen, excuse me. Go ahead. I found the deposition you were looking for here.

Mr. Schuler: We have no further pages on the Simms deposition to add, Your Honor.

The Court: Mr. Fenton, I'll give you back your copy of the supplemental deposition of Mr. Wilson. I located it over to the side here.

[352] All right. That takes care of Mr. Simms then. Now, go to Lenard Harrison.

Mr. Fenton: From Mr. Harrison plaintiff offers in evidence Pages 1 through 19.

Mr. Schuler: We have nothing further to add to that, Your Honor.

The Court: All right. Mr. Trujillo.

Mr. Fenton: Plaintiff offers in evidence Pages 1 through 13.

Mr. Schuler: We have nothing to add to that one, either, Your Honor.

The Court: Mr. Earmitt C. Jones.

Mr. Fenton: From Mr. Jones plaintiff offers in evidence Pages 1 through 17.

Mr. Schuler: We have nothing to add to that one, Your Honor.

The Court: All right, sir. Mr. Jerome Pastwick.

Mr. Fenton: On Mr. Pastwick, plaintiff offers in evidence Pages 1 through 17.

Mr. Schuler: We have nothing to add to that, but we do have an objection.

The Court: All right. Let me hear your objection.

Mr. Fenton: On Pages 8 and 9 the question **[353]** at the top of Page 8 is, "Why do you believe you received those warnings or letters", is calling for a conclusion, and that continues down through most of the page.

Then, there is a request for the personal opinion of the witness as to the reputation of the company, and continuing on over to Page 9. The witness is talking about what his conclusion is, or what he believed was the position of the person he was talking about. Again, that's hearsay.

The Court: Through Line what on Page 9?

Mr. Schuler: Through Line 10 on Page 9.

The Court: All right. I've got to mark your objection. I'm going to read that before I rule on that. Of course, rank hearsay, I'm going to omit, and not consider, and I have already ruled on the reputation phases.

Mr. Schuler: The first part of Page 8 was a conclusion.

The Court: Yes, I have that down.

Mr. Schuler: All right.

The Court: A conclusion there. I won't consider that. All right. We're going into the Los Angeles depositions now.

Mr. David R. Nagel.

Mr. Schuler: Your Honor, there will be a considerable amount of objections on the Los Angeles depositions, and I wonder if this might be an appropriate time **[354]** for us to go out of order and take the two witnesses I have whose testimony will be quite short.

The Court: Do you have any objection to that?

Mr. Fenton: None.

The Court: All right. Let's bring the witnesses forward and have them sworn at this time.

* * * * * * *

ROBERT M. BAILEY,

called as a witness at the instance of the defendant company, having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Schuler

Q. Will you please state your full name for the record. A. Robert M. Bailey.

Q. And how do you spell your name? A. B-a-i-l-e-y.

Q. What is your residence address, Mr. Bailey? A. Route 1, Royse, Texas.

Q. And is that a suburb of Dallas, Texas? A. Long rural.

Q. Quite a ways from Dallas, isn't it? **[355]** A. Right.

Q. Do you work in Dallas for T.I.M.E.-DC? A. Right.

Q. What is your position there? A. Dock supervisor.

Q. And how long have you been there as dock supervisor? A. About three and a half years.

Q. Prior to that time where did you work, Mr. Bailey? A. Western Gillette.

Q. Did you know a man by the name of Harrell Holley at Western Gillette? A. Yes.

Q. Did you have any contact with Mr. Holley after you left Western Gillette and came to T.I.M.E.-DC at Dallas? A. I did. He was laid off and I did have contact with him seeking—he was seeking employment.

Q. Did you contact him to see if he would want to be employed by T.I.M.E.-DC at Dallas? A. I sent word that I would like to see him.

Q. And did he come in there after word to apply for a job? A. Right.

Q. Now, he has testified previously in this proceeding that he filed an application October 21st, 1970. Do you remember that as being the approximate date when he came in to apply? **[356]** A. I couldn't say that that was the date. Probably was.

Q. His testimony indicated that the first person he saw was the road supervisor. Who is the road supervisor at the Dallas terminal of T.I.M.E.-DC? A. Roy Walker.

Q. And do you know of your own knowledge who Mr. Holley came to see first? A. Myself.

Q. And what did he ask about and what did you tell him? A. He brought his application and I was reviewing his application and he did state on his application that he was seeking work either in the city or on the road.

Q. Did you make any comments to him about the availability of jobs on either city or road? A. I told him we could use him in the city but his chances of getting any road work were very slim.

Q. And did you then have any further dealings with him on that day? A. I did. I took him to see Mr. Walker, since he was the road supervisor, and introduced him and Mr. Walker told him the same thing.

Q. Well, we will get into that with Mr. Walker.

Did Mr. Holley work as a casual after filling out an application? A. Right. The following day he worked in the city.

[357] Q. And did he work any time after that as a city casual? A. He worked one Saturday.

Q. Did you have any occasion to ask him on that Saturday if he wanted to come back later for some more casual work in

the city? A. I believe I asked him to come back that Monday. Now, I couldn't swear to it, but as well as I can remember, he had other obligations for the following Monday and couldn't work for us.

Q. Did you at any time thereafter try to get him to come back to work as a casual in the city? A. I tried a couple of times by phone, but I never saw him personally again after that.

Q. Mr. Holley has testified that after he had worked two or three days for you, he called back and was told that your company could not use him. Did you ever talk to him and tell him a thing like that? A. No, sir.

Q. And did you, in fact, affirmatively seek to get him back as a casual in the city? A. Other than calling him, that was the only contact I would have had with him, but after I called him a few times, well, I quit trying.

Q. Now, another witness that appeared here was a man by the name of Michael Arriaga. He said that he thought he was **[358]** told by someone at the company that there was no hiring going on for city driver jobs, for dock work around May of 1970. Do you remember having any contact with Mr. Arriaga at all? A. I don't remember the name.

Q. Another witness was Roger McCrimmon who testified regarding applying for a road job in April of 1970, and he indicated that he was told by the terminal manager that there was a policy against transferring from the city to the road at the Dallas terminal. My question to you is do you know of any white city drivers who have sought a transfer to a road job and have been denied this because of the same uniform policy of no-transfer? A. Yes.

Q. Who are the white drivers you know? A. Morris Ashmore.

Q. Anybody else? A. I have heard that Bill Veazy did, but this is not my own knowledge.

Mr. Schuler: I have no further questions.

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[366] **ROY L. WALKER, JR.,**

called as a witness at the instance of the defendant company, having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Schuler:

Q. Will you please state your name for the record? A. Roy L. Walker, Jr.

Q. What is your residence address, Mr. Walker? A. 604 Spinner Road, Desoto, Texas.

Q. Is that somewhere near Dallas? A. Yes, sir.

Q. And do you work for T.I.M.E.-DC in the Dallas? A. Yes, sir.

Q. And do you work for T.I.M.E.-DC in the Dallas terminal? A. Yes, sir.

Q. What is your title there, Mr. Walker? A. I am line driver supervisor and office manager.

Q. How long have you been employed by T.I.M.E.-DC? A. Since 1960.

Q. And how long have you been employed in the Dallas terminal? A. All this time, sir.

Q. How long have you been line driver supervisor? A. About five or six years.

[367] Q. All right. Then you were line driver supervisor in 1970 during the month of October, weren't you? A. Yes, sir.

Q. Do you recall during that month that a man named Harrell Holley came in to see you about a road driver job? A. Yes, sir.

Q. Did he come in by himself or did someone else bring him in? A. No, sir. Mr. Bailey brought him in and introduced him to me.

Q. And what did you tell Mr. Holley about the likelihood of getting a road driver job? A. We told him that at that time we weren't using too many casuals and we were using some in the city, but we didn't let them switch from the line or the road to the city or vice versa, and he stood a much better chance of obtaining employment in the city.

Q. Did you give him any details as to what your situation was for either regular or casual road work? A. No, sir, except that we just weren't using too many casuals at this particular time.

Q. Did Mr. Holley raise any objection to what you told him about the availability of road work? A. No, sir.

Q. Did you have any further contact with Mr. Holley? **[368]** A. No, sir.

Q. To the best of your knowledge, did he commence to work as a casual on the city board? A. As far as I know, yes, sir.

Q. Did you at any time ever tell him that he would never be used again by the company? A. No, sir.

Q. I'm going to show you what is part of Exhibit 146 that has been introduced in this proceeding, I'd like you to look at the Dallas line driver seniority roster and with respect to Mr. Holley, he claimed that he applied for a road driver job in October of 1970, I want to direct your attention to the two

people that were hired after that in November of 1970, Mr. McBride and Mr. Bangs, will you tell us what their current status is now? A. They are laid off.

Q. And go up the row from them a little bit and tell us the status of the next man above them and tell us what seniority date each man has. A. Well, the next man above Mr. McBride is Mr. Fink. He has resigned, but his seniority date was August 14, 1970.

Q. That was approximately two months prior to the time Mr. Holley came in, wasn't it? A. Yes, sir.

Q. All right. Continue on up the list, if you will. **[369]** A. The next one is Mr. Pierce. His seniority date is June 11th, 1970. He is on layoff at the Dallas terminal. He has exercised his seniority and bumped in at one of the other terminals.

Q. All right. Continue, please. A. The next man is Mr. Rushing, and his seniority date is June 7th, 1969. He is currently on layoff.

Q. All right. To shorten it up a bit, are any of the other men on that seniority roster above Mr. Rushing on layoff at the present time? A. Well, now, Mr. Wallace, who is above Mr. Rushing, is on layoff, but he also exercised his seniority and bumped in at another terminal.

Q. All right. Anybody else? A. Yes, sir. Mr. Dean, and his seniority date is May 27th, 1968, and he is on layoff at Dallas but he has bumped in at another terminal.

Q. Now, I'd like to direct your attention to the first five men on that line driver seniority roster who show seniority dates between the years of 1963 and 1966, I'd like to ask you if you know of your own knowledge if those men came into your terminal under modified seniority and if so, approximately what date they came into your terminal. A. Yes, sir. The top five men are all, or have all come into Dallas under modified seniority.

[370] Q. Would you give some examples, where they came from and when they came in? A. Yes, sir. The first name, Mr. Howell, he came into Dallas from Lubbock and it was in, I think, February of 1970.

Q. All right. A. Mr. Richardson, he came in from Lubbock in December of '69.

Mr. Allbritton, he also came in from Lubbock in November of '69.

Mr. Riffel, he came in from Oklahoma City and the last time he came in was in August of 1970.

Then we have Mr. Bruce, which came in November of '69. He came in from Lubbock.

Q. The Mr. Riffel that you said came in the last time in August of '70, did he come in under modified seniority as some time prior to August, 1970? A. Yes, sir.

Q. In what month? A. In May.

Q. When each of these five men came in under modified seniority, did this result in any of the men with the lesser seniority being bumped from the line driver jobs? A. Yes, sir.

Q. So for each man that came in, one of your regulars was bumped off, is that right? A. Yes, sir.

[371] Q. Now, I believe you said that Mr. Howell, for example, came in February, 1970, and that would have resulted in someone being bumped off, wouldn't it? A. Yes, sir.

Q. Mr. Riffel, you said, came in May of 1970 and that would have resulted in someone being bumped off. A. Yes, sir.

Q. Would you tell us then what your opinion would be as to whether there were any openings for line drivers in April of 1970, which is between the periods that Mr. Howell and Mr. Riffel bumped in, which was the time that Mr. Roger McCrimmon applied for a road job; would there have been an opening at that time? A. No, sir, because during that time business was fairly

slow, because as you see, we have—that Riffel came from Oklahoma City where he was on layoff.

Q. He came in a month after the time that Mr. McCrimmon said he filed for a road job, didn't he? A. Yes, sir. He came in May the first time.

Q. Now, Mr. Bailey indicated previously that the last two men, McBride and Bangs, on the roster forced their way on to the road board through a union grievance.

The Court: Phil, can you do anything about that? Hold up here a minute.

(The lights in the courtroom ceased to function at this time.)

[372] The Court: While we are off the record here, let's discuss something.

(Discussion between Court and Counsel off the record.)

The Court: I'm just thinking about, we're having a hard time cranking up it seems, and somebody has indicated to me last week that we're going a little faster than we expected. Just looking, we ought to get these depositions ruled on and submitted today, don't you think, Mr. Fenton?

Mr. Fenton: I think so, Your Honor, yes, sir.

The Court: Then, that is your case, as I understand it.

Mr. Fenton: We have a few interrogatories, then that's our case.

The Court: All right. Well, let's assume that we get through today. How much time—how many days will T.I.M.E. need to present their case?

Mr. Schuler: I would estimate a day and a half, Your Honor.

The Court: How about the unions?

Mr. Wells: I think a couple of days.

(Further discussion between Court and Counsel off the record.)

The Bailiff: Sir, it will be about ten minutes.

The Court: We'll just stand by.

[373] It's ordered that the government will file its findings of fact and conclusions, proposals in that respect, by June 15th, and the defendants will each file their findings of fact and conclusions of law by July 15th. The government may respond and modify or change or make additions by August 1st.

After these have been received, I will advise Counsel of the time and place for the argument, which I want to do sometime in August and get this matter disposed of, because I have a tendency to forget some of these details after just so long.

(The immediate preceding question by Counsel to the witness was then read by the reporter to the witness.)

Q. (By Mr. Schuler) Do you know whether or not that happened, Mr. Walker? A. (By the witness) Well, there was a grievance as such, sir. They came down and had their time in and they went on the board.

Q. Those were the two gentlemen, were they not, who went on the board shortly after the time that Harrell Holley filed his application? A. Yes, sir.

Q. All right. Do you know Michael Arriaga, or did you have anything to do with the application that he filed? A. No, sir.

Q. The employment application of Mr. Arriaga, I believe, is an exhibit in this proceeding, and I believe on the employment **[374]** application there is a statement that says that his prior job was working at Red Ball Freight, and that he was discharged for taking part in an unauthorized labor disturbance. Were you aware at any time up until yesterday that Mr. Arriaga had such a comment on his employment application? A. No, sir.

Q. Are you aware of any white city driver who had requested a transfer to the road board at any time in the past? A. Yes, sir.

Q. What are the names of those gentlemen? A. Bill Veazey and John Connell.

Q. How do you spell Connell? A. C-o-n-n-e-l-l.

Q. Do you have a man named Ashmore? A. Yes, sir.

Q. To the best of your knowledge, are they still working as city drivers? A. Yes, sir.

Mr. Schuler: No further questions.

Mr. Wells: No questions.

Mr. Schuler: Your Honor, there's one question that I would like to ask additionally.

The Court: All right. Let's get it in the **[375]** record.

Further Examination

By Mr. Schuler

Q Mr. Walker, as to the two men who forced their way on the road board through a union grievance, McBride and Bangs, can you tell us how long they had worked as casuals prior to the time they were put on the board in November of 1970? A. Sir, they had worked several months prior to this. It's hard for me to remember the exact date on it, though, but we have used them, I'd say, five or six months, maybe longer.

Mr. Schuler: Thank you. No further questions.

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[388] All right. Let's continue now with the Los Angeles depositions.

[389] Mr. Schuler: Your Honor, I have just one other thing I'd like to point out to the Court.

Mr. Walker, who has just completed his testimony, was called here today specifically in the nature of a rebuttal witness as to witnesses woh appeared here in person for the plaintiff. He also was deposed in Dallas, and his testimony there was reduced to a summary. I believe you read his summary.

The Court: Yes, sir.

Mr. Schuler: We also intend to rely on that summary of his deposition. We're not presenting him here in lieu of that summary.

The Court: I believe we crossed that bridge in this case before. We had another case similar to it, and I ruled that you can use the depositions even though he is here in person. That is what you're asking, and I will so consider the use of the summary of his deposition.

Mr. Wells: I misunderstood. I thought on the prior ruling that it was that the live witness would supersede the deposition. Am I wrong?

Mr. Fenton: That's correct, Mr. Wells, but Mr. Schuler's point is that Mr. Walker was deposed on many other matters down in Dallas, and the summary of his deposition was agreed upon among us that Mr. Schuler intends to rely on that summary as well as Mr. Walker's testimony.

Mr. Wells: I am quite clear about Mr. **[390]** Schuler's position. I wanted to understand the Court's ruling on the prior matter because I had assumed that excepting Walker, any live witness who appeared here superseded his deposition.

The Court: Well, except Walker, and those in the same category with him. I'm talking about the summary depositions.

I was a little broad in my statement. I was referring to those summaries that I have already read.

Mr. Wells: Yes, sir.

The Court: That is almost agreed testimony rather than being any contest.

Mr. Schuler: Your Honor, I think——

The Court: So I am going to consider Mr. Walker's summary deposition that you have agreed upon as well as his testimony given from the stand.

Mr. Schuler: Thank you. I believe on this other part that Mr. Fenton raised, he had indicated in his portion of the pretrial order that if a witness could appear at the hearing the deposition would not even be offered into evidence. I think this was Mr. Wells point, too.

The Court: That's agreed except for impeachment purposes, of course.

Mr. Schuler: Yes, sir.

The Court: That's true.

Mr. Schuler: We did have one or two **[391]** witnesses—for example, there was a Thomas White, and his testimony stands that, as I understand it, his deposition was not offered.

The Court: That's correct.

Mr. Schuler: Thank you.

The Court: What I said was limited to the summaries that you have prepared and submitted that I have read.

All right, sir. Mr. Nagel.

Mr. Fenton: With respect to Mr. Nagel's deposition, plaintiff offers in evidence Pages 1 through 67.

The Court: One through what?

Mr. Fenton: Sixty-seven.

The Court: All right, sir.

Mr. Schuler: We would like to add——

The Court: Wait a minute, wait a minute. Just a minute. I don't have but twenty-two pages here.

Mr. Fenton: Of Mr. Nagel?

The Court: David R. Nagel.

Mr. Fenton: Correct. Mr. David Nagel was deposed later on in September by the company.

The Court: Let's get the right Nagle deposition here.

Now, you're tendering only the deposition taken May 17th, 1971?

[392] Mr. Fenton: Correct.

The Court: All right. Let me give this back to you.
Anything further from anyone on Mr. Nagel's deposition?

Mr. Hunter: In that light, Your Honor, is it appropriate at this time, given the fact that there was an additional deposition taken on September 28th, 1971——

The Court: Let me get it out.

Mr. Hunter: Is it appropriate at this time to move that in addition to that deposition taken of Mr. Nagel on the earlier date, that the additional deposition of Mr. Nagel taken on September 28th, '71 also be offered into evidence at this time.

The Court: Well, now, what portions, or all of it?

Mr. Hunter: We would move that the entire deposition be submitted.

The Court: I don't know whether it's on the pre-trial order, but I indicated I would be lenient on this. Is there any objection?

Mr. Fenton: No objection. It's listed on the pre-trial order.

Mr. Hunter: Okay.

The Court: All right. That will be in there. One to sixty-seven on the May deposition and one to **[393]** twenty-two in the September deposition of David R. Nagel.
Anything further on those depositions?
All right, sir.

Mr. Wells: Judge, I'm sorry. I'm trying to find that short deposition, the second deposition.

The Court: All right. It's a short one.

Mr. Wells: Thank you. I found it.

Mr. Fenton: Mr. Rockwell, plaintiff offers in evidence——

The Court: Wait just a minute. I haven't gotten it up here yet.
All right. I have Mr. Rockwell before me, May, 1971 deposition.

Mr. Fenton: On Mr. Rockwell, plaintiff offers in evidence Pages 1 through 12 and Line 24 on Page 12, and then on Page 19, Lines 10 through 21; on Page 26, starting at Line 7, and going through Page 49, ending at Line 7; on Page 52, Lines 1 through 18, and on Page 58, beginning on Line 5 and through to the end of Page 62.

The Court: All right, sir.

Mr. Schuler: We want to have all of the cross-examination by the company. I'll have to find that page.

Mr. Wells: Forty-three, I think.

Mr. Schuler: That would be Page 43.

The Court: Page 43.

[394] Mr. Schuler: Starting at Line 23 and that continues over to Page 51, Line 22.

The Court: All right, sir. Anything further on Mr. Rockwell from anyone?

Mr. Wells: If Your Honor please, I am confused. I thought the government had twenty-six, Line 7 to 49, Line 7, which would include what Counsel just designated.

Mr. Schuler: Oh.

The Court: Yes, it would. There is some overlap between the two.

Mr. Wells: Thank you.

Mr. Schuler: Well, then, we would simply be adding the remainder of Page 49.

The Court: Yes, sir. You want all the cross-examination in there.

Mr. Schuler: Yes, sir. Pages 51 and 52.

The Court: All right, sir.

Mr. Schuler: Also there is a supplemental deposition of Mr. Rockwell.

The Court: All right. I have that in front of me, September, '71.

Mr. Schuler: We want to add, ask that Pages 1 to 10 be utilized there.

The Court: All right, sir. Anything from the government on that?

[395] Mr. Fenton: No objection.

The Court: Anything on the supplemental you want to offer?

Mr. Fenton: I'm sorry. No.

The Court: All right. We'll go to Anthony W. Lillywhite, May, 1971 deposition.

Mr. Fenton: From Mr. Lillywhite's deposition plaintiff offers in evidence Pages 1 through 50.

Mr. Schuler: We have nothing to add there, Your Honor, and there is a further deposition of Mr. Lillywhite, and we would like to designate Pages 1 through 13 of that.

The Court: That's the September deposition, Pages 1 through 13. All right, sir.

All right. I guess Mr. Shepherd is next.

Mr. Fenton: On Mr. Shepherd plaintiff offers in evidence Pages 1 through 7 through Line 17 on Page 7.

The Court: One through seven.

Mr. Fenton: Pages 1 through 7.

The Court: Line 17.

Mr. Fenton: Through Line 17 on Page 7.

The Court: All right, sir.

Mr. Fenton: Then, Pages 21 through 24.

The Court: All right, sir.

Mr. Schuler: I'm sorry. What were those pages again, please?

[396] Mr. Fenton: The first was one through seven, Line 17, and then Pages 21 through 24.

Mr. Wells: May we go off the record a moment?

The Court: Yes, sir.

(Discussion between Court and Counsel off the record.)

The Court: All right. What was Counsel for T.I.M.E. wanting to submit and tender into evidence?

Mr. Schuler: We have nothing further to offer on the Shepherd deposition.

The Court: Anything, Mr. Wells?

Mr. Wells: No, sir.

The Court: All right. Let's go to Mr. John Le Flore.

Mr. Fenton: On Mr. Le Flore, plaintiff offers in evidence Pages 1 through 6 through Line 5 on Page 6, and then on Page 8 beginning at Line 12, and through Page 9 ending at Line 12.

Mr. Schuler: Your Honor, this is a deposition that has what we consider to be a lot of objectionable conclusions, and hearsay. Part of it has been cured by striking out Pages 6 and 7 by the plaintiff.

The Court: Now, who is this witness. Is he an employee?

Mr. Fenton: He is a union official, Your **[397]** Honor.

The Court: All right. Now, Pages 6 and 7 we're talking about.

Mr. Schuler: However, there is other objectionable opinion and hearsay on Pages 4, 5, 9, 10, 18, 27, 31 and 33.

The Court: Well, none of that has been offered, now. He just went through Page 9, Line 12, as I understand, or was there anything else?

Mr. Fenton: That's all, Your Honor.

The Court: Let's don't get anything after Line 12 on Page 9.

Mr. Schuler: All right. Let me compare that one more time.

The Court: All right.

Mr. Schuler: All right. Page 9, the plaintiff has offered Lines 1 through 12 and we object to the answer on Lines 1 through 5 on the basis of hearsay.

The Court: It says to my knowledge. That's not hearsay.

Mr. Schuler: He goes on to say——

The Court: He says, "I think" a couple of times there, but——

Mr. Schuler: He may say that it is his own knowledge, Your Honor, but I don't think he has the **[398]** knowledge or, at least, the source of knowledge has not been stated on the record. There's no qualification for the basis of the knowledge, and it continues on down to Line 12, and there are statements in there, "The pressure was so great there that he had to leave". These are opinions mixed in with some factual material.

The Court: Well, I'm going to consider only the factual material, and there is one of them over there where he says, "To me this adds up to discrimination", statements like that, I'm not going to consider because we are looking at the facts here rather than unsolicited opinion.

Mr. Schuler: All right. Then, back on Pages 4 and 5, Lines 18 through 25, we feel are objectionable because they constitute hearsay.

The Court: Well, now, on the Federal Compliance Committee—Counsel, that's hearsay, but the substance of his answer is, "I helped him to try to secure applicants for these particular jobs", which is a response to the question. That will be considered. The rest of that I'm not going to consider for the truth of the matter stated, but only his assigned reasons for taking the action that he did. I think it is admissible for that purpose.

Mr. Schuler: All right. Thank you.

Over on Page 5, the answer starting on Line 6—Line 11, we also object to on the basis of hearsay, again the next **[399]** answer on Line 19 through Line 23 on the basis that is the statement of a conclusion without foundation.

The Court: Well, he said he was refused employment. You think that might not have been his knowledge, talking about Mr. Neely.

Mr. Schuler: Yes, we do not think any basis has been established for him having such knowledge.

The Court: Well, I am going to overrule. I'm going to let all of Page 5 in.

All right. Anything else?

Mr. Wells: If Your Honor please, we would offer on this Le Flore deposition Page 10, Line 20 through 23, Line 13, being the cross-examination.

The Court: All right. Page 10, Line 10 through what?

Mr. Wells: No, Page 10, Line 20.

The Court: Line 20, yes.

Mr. Wells: Through 23, Line 13.

The Court: All right, sir.

Mr. Wells: And Page 34, Line 11, through 35, Line 4.

The Court: All right, sir.
Anything further?

Mr. Schuler: I am not sure that I indicated some designated pages.

[400] The Court: No, sir.

Mr. Schuler: We want to designate Pages 23 through 30 and 35 through 36.

The Court: All right. There are some overlaps in that, but I understand what you are——

Mr. Schuler: Yes.

The Court: All right. Are we ready to go to Mr. Butler?

Mr. Fenton: On Mr. Butler plaintiff offers in evidence Pages 1 through 15, Line 6, and then——

The Court: One through fifteen?

Mr. Fenton: One through fifteen, Line 6 on 15, and then starting at Page 38 at Line 7, going through Page 40, Line 3.

The Court: All right, sir.

Mr. Schuler: We would like to add the cross-examination that appears on Pages 45 through 49 and also at 52 through 57. In addition, we think that this is a case where the deposition will have to be read in conjunction with the stated purpose of the deposition as shown on Page 4 of the list of the purposes. The purposes here is intended to show the failure and refusal of the predecessor company of T.I.M.E. by the name of LASME —there's a great deal in the deposition that tends to ramble on about other companies, and since the purpose stated being to refer only to LASME, we have no **[401]** objection, but any other references to other companies we think are objectionable.

The Court: Now, that's the reason I asked the government to give me their purpose because it certainly helps me in understanding the deposition.

Is there any objection to me considering it for these purposes?

Mr. Fenton: None at all, Your Honor.

Of course, we add the further statement that we believe that the actions or failure to act of predecessor companies are the responsibility of the current T.I.M.E.-DC.

The Court: Well, or the responsibility of——

Mr. Fenton: That is, they assumed the obligations.

The Court: As far as the pattern of discrimination, I'm sure it would carry on through, but I don't want to be in a position of agreeing that the monetary liability doesn't get in that, because——

Mr. Fenton: I am alluding to Title 7 proof.

Mr. Schuler: There's one specific objection, Pages 10 and 11, the hearsay matters.

The Court: All right. Let me find that. On pages 7—oh, I'm sorry. On Line 7, Page 10, there's hearsay regarding what

was said by a dispatcher in the hiring **[402]** hall named Ed Blackmar. He was not a T.I.M.E. employee, and yet this witness attempted to say what that man told him. This is an employee, the dispatcher at the union hall we're talking about here.

Mr. Schuler: Yes.

The Court: Talking to this witness. No T.I.M.E. employee involved. I'm going to sustain those objections.

Mr. Schuler: And then, at Lines 13 through 17 there is a reference to two or three black drivers.

Well, that refers back to something that was said by Blackmar.

The Court: Yes, sir.

Mr. Schuler: We think that should be stricken as hearsay.

The Court: Goes through Line 5 on Page 11, I presume.

Mr. Schuler: Yes.

The Court: Well, I'm going to exclude the hearsay. I don't think it is proper evidence in this suit.

Mr. Schuler: And included in that, at the bottom of Page 10, starting at Line 23, going over to Line 5, Page 11.

The Court: Yes, sir, that's hearsay.

Mr. Schuler: That is hearsay.

[403] The Court: Yes, sir.

Mr. Schuler: That completes the objectionable material in that deposition.

The Court: Let's go to Mr. Williams.

Mr. Fenton: Line 7 on Page 10, through Line 5 on Page 11, is that correct?

The Court: My ruling was I'm going to read this, Mr. Fenton, and I'm not going to consider any portions of it that is hearsay. I know some things he was testifying to were not hearsay, then all of a sudden he rambles and says they told him so and so over the telephone. I'm going to read that and if there is a fact like he stated, "I went out to the union hall that morning", well, that's fine. I'm not going to exclude it, but his objection in that respect started at Line 3 on Page 10 and down through Page 12, Line 2.

Mr. Fenton: All right.

The Court: As I understood. I will read those and examine them accordingly.

Mr. Wells: Before you get away from Mr. Butler's deposition, if Your Honor please, I have some additional designations.

The Court: Yes, sir.

Mr. Wells: Page 44, Line 1 through Line 25.

The Court: All right, sir. Now, we are **[404]** at Mr. John T. Williams.

Mr. Fenton: On Mr. Williams plaintiff offers in evidence Pages 1 through 12.

The Court: Pages 1 through 12?

Mr. Schuler: We have nothing additional to offer regarding Mr. Williams.

Mr. Wells: We offer Pages 13 through the remainder of the deposition, through Page 23.

The Court: All right, sir. That's all of that deposition.
Go to Mr. Lyle West.

Mr. Fenton: On Mr. West plaintiff offers Pages 1 through 9 on Line 3 on Page 9. Then begininng at—Pardon me. Beginning at Line 17 on Page 9 going through——

The Court: That is Page 9?

Mr. Fenton: Right. Going through Page 10, Line 1. And beginning at Line 24 on Page 10 and going through Page 14 through Line 6. Beginning at Line 20 on Page 14 and going through Page 17, through Line 24; and beginning on Page 19 at Line 23 and going through Page 20 through Line 10.

Mr. Schuler: We would object to the entire deposition as referring to events that are too remote. I think probably if you desire to read it with that objection in mind, we would have no objection to that procedure.

The Court: I will make the notation that **[405]** you objected on the remoteness. I will have to read it to determine it.

Now, I indicated awhile ago this remoteness is going to the weight of the evidence. I don't mean to say that I am not going to draw a line somewhere, but I will just have to examine it and if it's just too remote, had nothing to do with matters in this suit, or could have no possible bearing, I will not consider it, but if it does have evidence of a pattern of discrimination that existed prior to the effective date of the Act, it has some relevancy to the suit, and I will consider it.

Mr. Schuler: All right. In that regard, if you're going to read it with that thought in mind, we think the entire deposition should be read, including the parts that were omitted by Mr. Fenton in this statement of the parts.

The Court: You're doing that on the basis that it is necessary in order to rule on the objection or to determine what weight should be given to it.

Mr. Fenton: For both purposes.

The Court: Yes, sir. I understand. Well, I'll just examine that entire deposition then.

Mr. Ruddison.

Mr. Fenton: On Mr. Ruddison, plaintiff offers in evidence Pages 1 through 13.

Mr. Schuler: We would like to have all of his cross-examination included, and we have specific objections **[406]** On Pages

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The Court: Let's see, let me get the cross-examination down. Where does that start? The index doesn't help me much.

Mr. Schuler: Well, as a matter of fact, I guess Page 1 through 13.

The Court: That is the entire deposition, as a matter of fact. Yes, all right. Now, what are your objections?

Mr. Schuler: There is hearsay on Page 10, Lines 6 through 11.

The Court: Page what, sir?

Mr. Schuler: Page 10, Line 6 through 11.

Mr. Fenton: Your Honor, I believe this is a company official. This would be an admission of the company.

The Court: What is this man's capacity?

Mr. Fenton: Bob Adams identified——

The Court: Supervisor of some sort?

Mr. Schuler: Well, the remark in question is referring to something that was said by Tom White, one of the deponents. It does not refer to what Mr. Adams of T.I.M.E.-DC had to say.

The Court: He said he gave me the same answer, referring to Mr. Adams. He says what was that.

Mr. Schuler: I withdraw that objection, **[407]** Your Honor.

The Court: The answer just doesn't make much sense to me.

Mr. Schuler: I'll withdraw that objection, Your Honor.

The Court: All right, sir. Well, that's got the entire deposition of Mr. Ruddison in.

We go to Mr. Roy F. Patton.

Mr. Fenton: Plaintiff offers in evidence Pages 1 through 11, Line 23 on Page 11.

The Court: I'm having a little trouble with these pages sticking. What line?

Mr. Fenton: Line 23.

The Court: All right, sir.

Mr. Fenton: Then, starting at Page 12 at Line 16 and going through Page 20 through Line 9.

The Court: All right, sir.

Mr. Fenton: Then, Pages 22 through 28.

The Court: All right, sir. That leaves a small portion of that deposition that is not tendered here. Does anybody wish to tender those omitted lines?

Mr. Schuler: Let's see, I guess, Your Honor, on this one we will want you to read all of the deposition.

The Court: Well, I think I can read all of it rather than picking out the others. It's not half a page **[408]** omitted there.

Mr. Schuler: All right.

Mr. Wells: Excuse me. Are you still on the Patton deposition?

The Court: Roy F. Patton. What they have tendered in evidence was almost the entire deposition with the exception of Page 21, and the last half of Page 20 and the first half of Page 12, so Mr. Schuler suggested I just read the entire thing, so I am going to do that.

Any objection to it?

Mr. Schuler: And I do have a couple of objections. On Page 16 and 17——

The Court: Sixteen and seventeen?

Mr. Schuler: Sixteen and seventeen there is hearsay contained in the answer on Line 18 and Line 19.

The Court: I don't think that's hearsay. He and another man went up to a supervisor and applied for a job, to Mr. Starr, who, I presume is the supervisor there, isn't he?

Mr. Fenton: That's correct.

The Court: I don't believe that's hearsay.

Mr. Schuler: Also, at the top of Page 17 there are also references in the first two questions and answers, running down through Line 5——

The Court: Yes, sir.

[409] Mr. Schuler: ——regarding this witness' knowledge as to when another man by the name of White filed a complaint. We believe this would be hearsay, also.

The Court: Doesn't sound like he really knew, just what he knew from hearsay is what I get out of those. I'm going to sustain that objection.

Mr. Schuler: And at both Pages 8 and 18 there are matters that we think are remote and, as I understand your ruling, you're going to——

The Court: Let that go to the weight.

Mr. Schuler: ——let it go to the weight.

The Court: What pages are those that are remote?

Mr. Schuler: Eight and eighteen.

The Court: All right. I'll flag that so I'll note it at the time.

Mr. Schuler: On Page 11 and 12, starting at Line 24—on Page 11 there is a conclusion. This continues on over to Line 15.

The Court: Well, Mr. Fenton didn't offer those, as a matter of fact, so let's just exclude it.

Mr. Schuler: All right, fine.

The Court: He did not offer those.

Mr. Fenton: That's correct.

The Court: So we will just——

[410] Mr. Schuler: That concludes the objections on that deposition.

The Court: All right, sir. Next is Mr. Banuelos.

Mr. Fenton: Mr. Banuelos, plaintiff offers in evidence Pages 1 through 21. That's the entire deposition.

The Court: All right, sir. Any objection from the other parties?

Mr. Schuler: We have several objections on that one. Pages 6 to 9, we believe those allegations are remote, and subject to your earlier interpretation.

The Court: I'll note that.

Mr. Schuler: And on Page 10, Line 16 to 20, we believe that this is hearsay, and a conclusion without foundation.

The Court: Well, the question is did you ever complain to a union official about this and the answer is yes, I complained, and from there on is where you object, isn't it?

Mr. Schuler: Yes.

The Court: I am just going to have to take those under advisement. I'm going to have to have the sense of the deposition before I can really understand, but I have got a notation.

Mr. Schuler: All right. And those are the **[411]** only objections we have.

The Court: All right. All right, sir. Mr. William Thomas Simpson, Jr.

Mr. Fenton: From Mr. Simpson plaintiff offers in evidence Pages 1 through 14 and again this is the entire deposition.

The Court: Any objection?

Mr. Schuler: We have one objection. Well, actually it is a whole line of questions from Page 6, Line 19, over to Page 8, Line 24. We think the whole line of questioning is objectionable on the ground of hearsay.

Mr. Fenton: Your Honor, I believe all this testimony is what the man stated from his personal knowledge.

The Court: Well, how about, just as an example, Lines 20, 21 and 22; who is Mr. Nagel?

Mr. Fenton: Mr. Nagel is an official of the company.

The Court: I take it back. Well, any testimony in this deposition from Page 6, Line 19 through Page 8, Line 24 will be omitted as to hearsay. I'm talking about conversations that this witness had with people who were not employees of T.I.M.E.

Mr. Fenton: Your Honor, we also believe that conversations had with the unions' officials would be admissible.

[412] The Court: Or with union parties to the suit, or their officials, not a fellow employee, but I'm talking about an employee in a supervisory capacity.

Mr. Wells: Your Honor, we would like to record our continuing objection to testimony with respect to conversations with local union officials. For example, purported conversations with John T. Williams, who is a government witness, and at one time was a local union agent, but is no agent of the defendant unions before you.

The Court: I'm going to overrule and consider these.

All right, sir. Anything else from Mr. Thomas—William Thomas Simpson's deposition? If not, we will go to Mr. Virgil A. Hardin.

Mr. Fenton: On Mr. Hardin plaintiff offers in evidence Pages 1 through 10, Line 6 on Page 10.

Mr. Schuler: Your Honor, we want Pages 10 to 20, so I guess it's going to end up being the whole deposition.

Mr. Fenton: Right. If you are offering Pages 20, Line 15, through Page 23.

The Court: All right. That effectively offers the entire deposition except Pages 21, 22 and 23. Anybody want to admit those for any particular reason?

Any objection then?

[413] Mr. Fenton: Mr. Almaraz, plaintiff offers in evidence Pages 1 through 33. This is the entire deposition.

The Court: All right. Any objection?

Mr. Schuler: We have some objections there, Your Honor.

The Court: All right.

Mr. Schuler: On Pages 6, 7 and 8 the matters related there are remote. On Page 14, starting with Line 9 to Line 21, the answers there are based on hearsay.

The Court: Not responsive it doesn't look like, either.

Mr. Schuler: Yes, that would be an additional basis.

The Court: I am going to sustain the objection. You asked him how long and he gave a speech. I'm going to sustain the objection to that portion of the deposition.

Mr. Fenton: That is Page 14, Line 9?

The Court: Nine to twenty-one.

Mr. Schuler: And on Page 20, may I have just a moment, Your Honor?

The Court: Yes, sir.

Mr. Schuler: Actually, it starts back on Page 19 with the answer on Line 9, continuing over to Line 9 on Page 20. The whole tenor of that has to do with an unsupported opinion and conclusion, and on the top of Page 20 **[414]** a reference to three or five other individuals who allegedly felt pressure, and I don't know how he could testify as to their feelings or opinions.

The Court: Well, I have got to go back and read Mr. Hunter's questions on that to rule. But as far as the first part of Page 19, I am going to overrule the objection. He's stating his reason for doing or not doing something. So I'm going to overrule the objections to that extent on Pages 19 and 20 and we'll consider that.

Gentlemen, I've got criminal sentencings at 1:00. I'm going to go through and see if we can't at least get through the Los Angeles deposition before we recess for lunch.

Mr. Schuler: Your Honor, in the previous recess, we had reviewed again through Mr.—I guess through Mr. Elmer Banuelos, and we would appreciate a little time to review the rest of the Los Angeles people.

The Court: All right. I'm going to give you more time because I have got to take care of the criminal matters at one. I ought to be through by 2:00. Why don't you review as much as you possibly can on all of these depositions, not just for Los Angeles, but whatever you might have right on through.

Mr. Schuler: All right. Thank you, Your Honor.

The Court: One other thing occurred to me **[415]** when we were talking about submitting these conclusions and proposed findings of fact. I don't think I'm going to ask you to put them in final form, your proposed remedies, but any suggestions you have got that you might have about these remedies.

Now, let's go off the record here.

(Discussion between Court and Counsel off the record.)

(Afternoon Session)

The Court: All right. I believe we're down to the depositions in Denver, Mr. John Passi.

Mr. Schuler: I believe that is at Los Angeles, Your Honor.

The Court: I said Denver, didn't I. I mean Los Angeles, yes, sir.

All right. What does the government wish to introduce?

Mr. Fenton: On Mr. Passi plaintiff offers in evidence Pages 1 through 12. This is the entire deposition.

The Court: All right. Are there objections from the defendants?

Mr. Schuler: No objection to that, Your Honor.

The Court: All right. Let's go to Mr. David E. O'Neal.

Mr. Fenton: From Mr. O'Neal plaintiff **[416]** offers in evidence Pages 1 through 24, Line 9.

The Court: All right. Now, anything that either of the defendants wish to offer, or tender in evidence on this deposition, or are there any objections?

Mr. Schuler: We have two matters. First, we would like to offer some remaining pages. Pages 24 through 30.

The Court: So this makes the entire deposition.

Mr. Schuler: Yes, yes, Your Honor. And there are several objections.

The Court: All right, sir.

Mr. Schuler: There are objections based on remoteness as to allegations on Pages 9 through 14 and 27 through 29.

The Court: Is Mr. O'Neal a supervisory employee?

Mr. Fenton: He is presently employed as a dock man, I believe, Your Honor.

The Court: All right. And he is talking about something that happened how far back, in 1965—'55, on Page 9.

Mr. Fenton: I think he's referring to '65 and '66.

The Court: Is that remote? Is that your **[417]** contention, Mr. Schuler?

Mr. Schuler: Well, let me see the rest of the pages. A little earlier on that page he said it was about '55 or '56. Then, I guess he does correct it.

The Court: I think he tries to correct it down on Line 22 there.

Mr. Schuler: Yes. I believe that's correct.

The Court: Well, if it's remote, I am going to make the same ruling. I just comment there that that might not be remote.

Mr. Schuler: All right. And then on Pages 10 through 14 there is testimony regarding a deceased company employee, and I'm not entirely sure of the state of the law in Texas, but I believe that that is admissible.

The Court: The Dead Man's Statute?

Mr. Schuler: As I say, I have not had the chance to check that.

The Court: Let's see, we've got a transaction that the government alleges with the corporation and then we have got testimony by the agent of that corporation that we are talking about who is now deceased, is that it?

Mr. Schuler: Yes. We have testimony from an employee of the company, Mr. O'Neal, relating to an alleged statement by a former terminal manager of the company, who is **[418]** now deceased.

The Court: These would not be transactions with the deceased, now. It would be with the company through the de-

ceased. I'm just thinking out loud. You briefed the Dead Man's Statute in Texas, Mr. Fenton.

Mr. Fenton: I'm sorry, I didn't, Your Honor.

The Court: All right. I'm going to have to take that under advisement. I don't know, either. I'll have to read the testimony to start with.

Mr. Schuler: All right.

Mr. Fenton: Our position would be that he is testifying as the company, or that these statements made by the official were made in behalf of the company.

The Court: I will just have to examine that testimony before I could rule on that.

Mr. Schuler: All right. And on Page 18 and 19 there is hearsay starting at Line 23, "I was aware of a black line driver," etc., continuing to Line 1 on Page 19.

The Court: That is obviously based upon hearsay there. Let me hear from the government.

Mr. Fenton: Your Honor, on Page 19 he is asked who was that and he states James Neely. Of course, Mr. Neely was a live witness here at this trial. I think he's testifying of his own personal knowledge.

[419] The Court: But he is not testifying of his personal knowledge as to what T.I.M.E. promised James Neely.

Mr. Fenton: That's correct.

The Court: So I am going to sustain it in that respect. I think the testimony can be fairly admitted to the effect that he knew that James Neely applied for a job, but as to what T.I.M.E. promised him would be hearsay as to this witness. I'm going to sustain it.

Mr. Schuler: And on Pages 25, 26, 27, starting at Line 22 on Page 25.

Mr. Fenton: Your Honor, if I could interject here, we terminated our offering of Mr. O'Neal on Page 24 at Line 9.

The Court: Yes, sir. This is what you tendered. Are you objecting to your testimony here?

Mr. Schuler: All right. We would like to—instead of adding Pages 24 to 30, we would like to again——

The Court: Twenty-five, Line 16 through 30, would that do it?

Mr. Schuler: Well, I think we'd like to add none of that.

The Court: Just omit it all.

Mr. Schuler: Omit all of that from 24 to 30.

[420] The Court: You at least agree with your own objections. All right. Let's go to Mr. James Alexander Floyd.

Mr. Fenton: With respect to Mr. Floyd, plaintiff offers in evidence Pages 1 through 21. This is all of Mr. Floyd's deposition.

The Court: Any objection?

Mr. Schuler: We have nothing further there, and as to objections, there are objections on remoteness on Pages 8, 9 and 10, and on Pages 10, conclusions are stated, Page 10, Lines 4 to 8.

The Court: What about on Page 12?

Mr. Schuler: Page 12?

The Court: Lines 5 through 9, I would assume.

Mr. Schuler: Yes. Also Lines 1 and 2.

The Court: Well, I'm going to let—let me see here, now. I think on Page 10 I'm going to overrule those objections. He was merely stating what he understood the man to have told him. On Page 12—How about the bottom of Page 11? Well, no, that's all right.

Mr. Schuler: The last—the part beginning on Line 24 on Page 11 is part of the answer going over to the top of Page 12, and I think that should be stricken, too, because of his statement being a conclusion.

[421] The Court: Well, it is non-responsive.

Mr. Schuler: It is.

The Court: He asked him what he told him and he said he didn't have any—that's the answer. I'm going to sustain the objection to Line 24, Page 11 through Line Number, oh, I think Line 8, Page 12, I think that last sentence on Line 8 and 9, Page 12 is admissible.

Mr. Schuler: All right. And that's all the objections we have.

The Court: All right. Let's go to Mr. George Taylor.

Mr. Fenton: On Mr. Taylor plaintiff offers into evidence Pages 1 through 33, which is the entire deposition.

The Court: All right, sir. Now, the objections.

Mr. Schuler: On Page 13 there is a conclusion stated.

The Court: What line?

Mr. Schuler: Lines 8 to 12.

The Court: Can a man testify as to what he understood? I'm going to overrule the objection on Page 13. It's what the witness understood, as I understand that testimony.

Mr. Schuler: All right. There is a typographical error on Page 30.

The Court: Page 30?

[422] Mr. Schuler: Yes. There is a reference to Defendants' Exhibit A, and it should be F, Exhibit F.

The Court: Any objection to changing A to F there, Mr. Fenton?

Mr. Fenton: No objection.

The Court: All right. I'm going to change the original of this deposition accordingly.

Mr. Schuler: And there is one other, if I may have just a moment. I think it stretches over several pages here.

The Court: Yes, sir.

Mr. Schuler: On Page 19, Lines 9 through 12—9 through 11, there is a statement based on hearsay.

The Court: Where he says, "I don't think anyone else that have applied for the line"?

Mr. Schuler: That's correct.

The Court: I think that's just a guess, so I am going to sustain the objection to Lines 8, 9, 10 and 11, starting with the last word on Line 8.

Mr. Fenton: That one sentence, Your Honor?

The Court: Just the one sentence. I think he answers the question the first part of it, anyway.

Mr. Schuler: There's one other, Your Honor. On Page 19, starting with Line 13, and continuing over to Page 14.

[423] The Court: Who is Mr. Cloward; is he an employee of T.I.M.E.?

Mr. Hunter: Former terminal manager at T.I.M.E.

The Court: Terminal manager.

Mr. Hunter. Yes. There are objections to the hearsay nature of it, but the series of leading questions has put in issue the deposition which did not appear through the colloquy.

The Court: Are you taking this under the rules that you have got to object to leading questions at the time, or it's waived?

Mr. Schuler: The objection was made, continuing——

Mr. Hunter: Continuing throughout the series of pages that Counsel for——

The Court: Well, now, we are through the questioning.

Mr. Hunter: Then, he commences and he never cures the objection. He just, in effect, restated the same question that the objection was made to originally.

Mr. Fenton: I believe he did cure it, Your Honor. He stated what did you say in reference to further conversations.

Mr. Hunter: There is no foundation yet **[424]** established for the fact that there was any further conversations at this point.

The Court: Well, now, you've made only one or—yes, only one objection to leading questions, although you say he repeats the leading portion.

Mr. Hunter: I thought it was somewhat unnecessary to continuing objecting on the same basis.

The Court: Well, I know, but what questions did he repeat?

Mr. Hunter: "Okay. Now, you say that after the first time you talked to Mr. Cloward you also talked to Mr. Cloward on several other occasions".

Mr. Schuler: On Page 13.

Mr. Hunter: Page 13, Line 13, the original leading question.

The Court: Yes, sir.

Mr. Hunter: "What did you say in reference to further conversations you had with Mr. Cloward after the first one". Same question.

The Court: That would be leading in view of the objection. All right.

Mr. Hunter: Yes, same question.

Mr. Schuler: Then, Your Honor, I think if you will look on down to Page 14 and 15. there never is a time or place indicated and the objection is not cured.

[425] The Court: Well, I made a notation of your objection. I'm going to have to examine this testimony in detail and it goes through what page and line?

Mr. Schuler: I think it goes all the way over to Page 15, Line 17, I believe it is.

The Court: All right. Line 17. All right. I have got a notation. I'll just have to put that in there and look at the testimony some more before I can rule on that.

Anything further on Mr. Taylor's deposition?

All right. Let's go to Mr. Marvin Richard Vestal.

Mr. Fenton: On Mr. Vestal plaintiff offers in evidence Page 1 through 33, the entire deposition.

The Court: All right. Are there objections?

Mr. Schuler: Just a moment, Your Honor.

The Court: Yes, sir.

Mr. Schuler: I think that's all we have there, Your Honor.

The Court: All right, sir.

Mr. Fenton, Now, with respect to our last person listed, Mr. Alley, we will not offer his deposition.

The Court: We will go now to the Nashville depositions.

Mr. Hunter: Okay, Your Honor, there was one further deposition taken in September by the company in Los Angeles involving a Jack Starr. We would offer that at this **[426]** time.

The Court: All right. That is in your list. Let me give you Mr. Alley and hand me Mr. Starr. Hold up just a minute so I can get the deposition.

All right. I have before me the deposition of Mr. Jack Starr. As I understand it, the defendant T.I.M.E. wishes to offer portions of that.

Mr. Hunter: Yes.

The Court: All right. What portions?

Mr. Hunter: The entire deposition.

The Court: Are there any objection?

Mr. Fenton: No.

The Court: It's admitted.

Mr. Hunter: Now, Your Honor, could we just have one second? May I ask plaintiff a question? If he is withdrawing Mr. Alley's deposition, is he withdrawing the claim on his behalf?

Mr. Fenton: Well, we didn't list a claim on behalf of Mr. Alley as an individual discriminatee.

Mr. Hunter: Further depositions we have taken in Los Angeles will not be needed to be submitted at this time, either.

Mr. Wells: Do I understand that there is no contention with respect to any of the matters set out in the Alley deposition?

[427] Mr. Fenton: That's correct.

The Court: All right.

Mr. Hunter: Now, in response to that, we would withdraw, as we indicated on the pre-trial order, the deposition of Mr. Powell.

The Court: Well, that hasn't been tendered today, has it?

Mr. Hunter: No, but it is on the pre-trial order.

The Court: I'm going to consider what you have offered today rather than on the pre-trial order, but I think you are correct in making the record clear on that.

I believe we want to go to Mr. Gibbs.

(Discussion between Court and Counsel off the record.)

The Court: All right. These Nashville depositions are in two volumes. Mrs. Kiker has tabbed the first page of each witness' testimony, so I would suggest we go through as if they were in separate binders, witness by witness, and have the government tender what they desire as to each witness, and then we will go to the defendant and they can tender what they want to and make objections as they see fit and we will have each witness listed separately.

All right. Let's talk about Mr. Gibbs here.

Mr. Fenton: On Mr. Gibbs plaintiff offers in evidence Pages 1 through 50 to Line 11, Page 56, starting at **[428]** Line 21 and going through Page 59 to Line 10, and then on Page 62, beginning at Line 25 through Page 66 through Line 17. Then, beginning on Page 70 at Line 16 through Page 74 at Line 16, and then beginning on Page 77 at Line 10 and through Page 80, Line 7. Then, beginning on Page 90 at Line 6 through Page 95 at Line 13.

The Court: All right, sir. Defendants have anything to offer or any objection to make?

Mr. Schuler: On Mr. Gibbs we do have some to offer. Page 59, Lines 11 to 25, and continuing over to Page 62 the end of the page, Line 25.

The Court: All right, sir.

Mr. Schuler: In addition, all of the cross-examination on Pages 95 to 108, and Mr. Gibbs was recalled and it appears in Volume 2 of this, and I will save it for Volume 2 if you want me to.

The Court: Wouldn't it be best for me to read it all together instead of having to pick it up?

Mr. Schuler: Well, I think it should be read in order because he was—several witnesses were recalled in the nature of rebuttal.

The Court: That's fine. All right.
We will now go to Mr. Dallas Ray Anderson.

Mr. Fenton: On Mr. Anderson plaintiff offers in evidence Pages 111 through 142 at Line 20 and then **[429]** beginning on Page 155, Line 6, through Page 157, Line 2.

Mr. Schuler: We would offer all the cross-examination of Mr. Anderson on Pages 145 to 152 and 157 and 158, and that's all we have to offer at the moment. Mr. Anderson was likewise recalled in the nature of rebuttal, and that appears in Volume. 2. I will point it out when we get there.

The Court: All right. Let's go to Mr. Wells. I don't mean to overlook you, Mr. Wells. You speak up when you want to introduce something.

Mr. Wells: Thank you, sir.

The Court: We will go now to Mr. Jasper Hampton.

Mr. Fenton: On Mr. Hampton plaintiff offers in evidence Pages 159 through 161, Line 20, and then Page 163 through 165, Line 9.

The Court: All right. Anything from the defendants?

Mr. Schuler: We'd like to offer Page 162, Lines 23 to 25. Let me check that just a moment.

The Court: Why don't we just give all of that one unless there's something objectionable to the part you want to omit. It's just four or five pages of the whole deposition. Is there anything objectionable, or are you prepared to answer that?

Mr. Schuler: Well, let's see.

[430] The Court: See, really all he's omitting is a little on Page 165 and a little on Page 166, and then, the top part of 162.

Mr. Schuler: I think Your Honor is right. We will put back in everything that Mr. Fenton left out.

The Court: So I am going to examine all of Mr. Hampton. Let's go to Mr. James Tilford Adamson.

Mr. Fenton: On Mr. Adamson, plaintiff offers Pages 167 through 174.

Mr. Schuler: We have nothing to add to that.

The Court: All right. Go to Mr. Lail.

Mr. Fenton: Pages 175 through 181.

Mr. Schuler: Nothing further to add to that.

The Court: Mr. Mince.

Mr. Fenton: On Mr. Mince, plaintiff offers in evidence Pages 182 through 189, Line 20.

Mr. Schuler: We would add from the point that Mr. Fenton left off, 189, Line 25, or Line 21, over to 193, Line 7. I don't know if that's the end of it or not.

The Court: Well, not quite. There's a little more there. You have some cross-examination down in there that you didn't put in. Just go through 194 and I'll **[431]** read the whole thing.

Mr. Schuler: As a matter of fact, on the pre-trial order I do have listed the remainder of 193, which is the remainder of the cross-examination.

The Court: Let's go to Lee Francis Jones.

Mr. Fenton: On Mr. Jones, plaintiff offers in evidence Pages 195 through 199, Line 14. On Page 201, beginning at Line 3 through Page 202 at Line 9, and on Page 208, beginning at Line 4 through Page 209, Line 11.

The Court: What was the last page?

Mr. Fenton: Page 209, Line 11. Page 209, Line 19 through 210, Line 13.

Mr. Schuler: We have two parts to add there, Your Honor. Page 202, Lines 10 to 25, ending on Page 203, Line 8. Page 206, starting at Line 2, continuing over to Page 208, Line 4.

Mr. Wells: If Your Honor please, we would add Pages 211, Line 7 through 214, Line 1.

The Court: Anything further?
All right. Let's go to Mr. Thomas Richard Johnson, which completes the first volume, I believe.

Mr. Fenton: On Johnson plaintiff offers in evidence Page 215 through Page 222, Line 15; Page 222, Line 20 through 227, Line 11; Page 227, Line 23 through 234, Line 5.

Mr. Schuler: We have nothing to add, **[432]** Your Honor.

Mr. Wells: Nor do we.

The Court: All right. Let me get the second volume out here. We will go to Mr. Crutchfield.

Mr. Fenton: On Mr. Crutchfield, plaintiff offers in evidence Pages 235, Lines 1 through 18, and Page 237 beginning at Line 17, through 244 and Line 3.

Mr. Schuler: Well, let's see here. Again, we are putting it all back in, Your Honor, from Page 235 starting at Line 19 going over to 237 from Line 1, then—or going over to 237, Line 16, and then from Page 244, Line 7 going to Line 15.

The Court: All right, sir. That gets all of it.

Mr. Schuler: Yes, all of the deposition.

Mr. Fenton: On Mr. Davis, plaintiff offers in evidence Pages 246 through 254, Line 3 and Page 258 through 262, Line 11.

Mr. Schuler: We have nothing further.

Mr. Wells: We have on that, if Your Honor please, Page 254, Line 3, through 258—I'm sorry. That should be 254, Line 5, through 258, Line 1.

The Court: All right. Mr. Luther Alvin Watson.

Mr. Fenton: On Mr. Watson plaintiff offers **[433]** in evidence Page 264 through 285, Line 21; 287, Line 3 through 17, and 289 beginning at Line 7 through 293, Line 1.

The Court: All right. Defendants?

Mr. Schuler: Nothing to add there, Your Honor.

Mr. Wells: We would add to Watson 293, Line 3 to 294, Line 13.

The Court: Line 13 or 14?
I wasn't questioning you as much as I just didn't understand what you said.

Mr. Wells: I said 13, but I would like to check. Through Line 13.

The Court: Line 14 says that's all. We go to Mr. Raymond Leslie Rucker.

Mr. Fenton: On Mr. Rucker plaintiff offers in evidence Pages 296 through 309.

Mr. Schuler: We have nothing to add there, Your Honor.

The Court: All right. Now, are we stipulating Mr. Moore?

Mr. Fenton: Yes, sir.

The Court: Go next to Wallicia Quovadis Majors.

Mr. Fenton: Mr. Majors, plaintiff offers in evidence Page 218 through 227.

[434] Mr. Schuler: We have nothing further there.

The Court: And we are stipulating Mr. Gibbs. Then, we get down to Mr. Homer W. Burns.

Mr. Fenton: On Mr. Burns, plaintiff offers in evidence Pages 335 through 361.

Mr. Schuler: Nothing further there.

The Court: I believe we stipulated Mr.——

Mr. Wells: Pardon me, Your Honor. Was it intended to skip Mr. Gibbs? I think that is what Mr. Schuler wanted to get in.

Mr. Fenton: I believe that is Kenneth Gibbs.

Mr. Schuler: Yes, Kenneth Gibbs was left out by the plaintiff. We have no objection to that.

Mr. Wells: All right.

The Court: Well, I guess the next is Mr. Levi Gant.

Mr. Fenton: Mr. Gant, plaintiff offers in evidence Pages 381 through 390.

Mr. Schuler: Nothing further to add to that.

The Court: Mr. William Edward Dobbin.

Mr. Fenton: Plaintiff offers in evidence 391 through 397.

[435] Mr. Schuler: We have nothing further there, either.

The Court: Mr. James E. Keeling.

Mr. Fenton: On Keeling plaintiff offers in evidence Page 398 through 404, Line 13.

Mr. Schuler: We would like to add Page 405, Lines 4 to 16.

The Court: Next, Mr. James Wallace.

Mr. Wells: Pardon me, please, sir.

The Court: Yes, sir.

Mr. Wells: On Keeling I would add Page 404, Line 16 through 405, Line 1.

The Court: All right. Anything further?

Mr. Fenton: On Wallace, plaintiff offers in evidence Page 407 through 416.

Mr. Schuler: We have nothing further there.

The Court: Now, we go to the second deposition of Mr. Kenneth Neil Gibbs, Jr., I believe.

Mr. Fenton: On Mr. Gibbs' second deposition plaintiff offers in evidence Page 431, Line 25, and then 432, beginning on Line 16 through 434, Line 18.

The Court: All right.

Mr. Schuler: Let's see, let me have just a moment, Your Honor. I think there is something further back **[436]** in that volume in the 300 series. Yes, Mr. Gibbs was recalled at Pages 328 through 334 and we would like to rely on that.

The Court: Now, this is the same Gibbs.

Mr. Schuler: Kenneth Neil Gibbs, Jr., the terminal manager at Nashville.

The Court: What pages did you want, 328 through what?

Mr. Schuler: 328 through 334.

The Court: All right, sir.

Mr. Schuler: And also, Pages 427 to 431, and I have designated the last part of 433 and 434, but I believe Mr. Fenton already has that in.

The Court: Yes, sir.

Mr. Schuler: So I will say I will go to 435, Line 3 and continue over to 436, Line 22.

The Court: Well, I believe that gets us down to Mr. Anderson.

Mr. Wells: I believe they skipped one part that we want in there, Judge.

The Court: All right. Let's pick it up now.

Mr. Wells: On Mr. Gibbs at 434, Line 21.

The Court: Line 21. All right, sir.

Mr. Wells: Yes, sir. Through Line 25.

The Court: All right, sir. Now Mr. Dallas **[437]** Ray Anderson.

Mr. Fenton: On Mr. Anderson's deposition, this is his second deposition, plaintiff offers in evidence Page 448, Line 3 through Page 454, Line 2.

The Court: 454, Line 2? All right, sir.

Mr. Schuler: We would offer all the previous pages, 438 through 437.

Mr. Wells: We would offer 454, Lines 5 through 16.

The Court: All right, sir. I believe we are now ready to go to the Atlanta depositions. C. W. Allison. That's all in one volume, I believe, isn't it?

Mr. Fenton: Right.

The Court: All right.

Mr. Fenton: Mr. Allison, plaintiff offers in evidence 1 through 52, Line 20; Pages 59 through 82, Line 17 and Pages 86 at Line 20 through Page 87, Line 10, Page 117, Line 15 through Page 119, Line 12; Page 121——

The Court: Let me catch up with you. Now, go ahead.

Mr. Fenton: Page 121 through 123, Line 21; Page 132, Line 18 through Page 133, Line 18; Page 135, Line 17 through Page 138, Line 17, and Page 140 through Page 143, Line 5.

Mr. Schuler: I'd like to inquire of Counsel, **[438]** is that Page 140 or Page 142?

Mr. Fenton: Excuse me. 142 through 143, Line 5.

The Court: All right. Defendant T.I.M.E.?

Mr. Schuler: All right. We would like to add, starting with Page 82, Line 18 through Page 86, Line 19. We would also like to add Page 87, Line 12, continuing to Page 106, Line 16; from Page 19, Line 13 through Page 120, and from Page 123, Line 22 through 126, Line 16; from Page 128, Line 1 to Page 132, Line 17; from Page 133, Line 20 to Page 135, Line 16, and from Page 138, Line 18 to Page 141, Line 25.

Mr. Wells: To which we would add Page 106, Line 18 through 117, Line 11.

The Court: All right, sir. Does that complete Mr. Allison? All right: Mr. Roy Gibson.

Mr. Fenton: On Gibson, plaintiff offers in evidence Pages 1 through 17, Line 24 and Pages 22 through 28.

Mr. Schuler: We'd like to add the material in the middle from Page 17, Line 24 to Page 22, Line 4.

The Court: That completes that one. All right. Mr. Joseph Amos.

Mr. Fenton: On Joseph Amos the plaintiff offers in evidence Pages 1 through 12, Line 10 and Page 12, Line **[439]** 20 through Page 16, Line 17.

The Court: Let's see. Through Page 16, Line 17?

Mr. Fenton: Correct.

The Court: All right.

Mr. Schuler: We would like to add from Page 16, Line 18 to Page 24, Line 20.

The Court: That completes Mr. Amos. So we go to Mr. Theodus Perry.

Mr. Fenton: On Mr. Perry plaintiff offers in evidence Pages 1 through 19.

Mr. Schuler: Nothing further.

Mr. Wells: Just a moment. What happened to Mr. Batchelor?

Mr. Fenton: Mr. Batchelor was inadvertently put in this list. A summary of the deposition was submitted in lieu of the deposition itself.

The Court: It is—it was in the pre-trial order, but not in the list you handed me this morning.

Mr. Wells: Mr. Grady Amos appeared as a live witness, therefore, his deposition is not before the Court?

Mr. Fenton: Correct.

The Court: All right. Mr. Calhoun.

Mr. Fenton: On Calhoun, plaintiff offers in evidence Pages 1 through 23, Line 21.

[440] Mr. Schuler: We have nothing further there, Your Honor.

The Court: All right. Let's go to the Chicago depositions. Mr. Drobny.

Mr. Fenton: On Mr. Drobny, plaintiff offers in evidence——

Mr. Wells: Excuse me. I take it you're not offering the deposition of Stroud or Swanson in Atlanta?

Mr. Fenton: We are not offering Mr. Swanson. A summary of Mr. Stroud's deposition has been prepared in lieu of submitting his deposition.

The Court: All right.

Mr. Fenton: On Mr. Drobny, plaintiff offers in evidence Pages 1 through 99.

Mr. Wells: If your Honor please, I'm sorry to slow things down, but I want to see where we stand.

The Court: Let's get them as we go through it.

Mr. Wells: On the Atlanta—on Swanson, as I recall, he was a shop employee. Are you offering any testimony with respect to the mechanics in Atlanta?

Mr. Fenton: Well, we are not offering Mr. Swanson's deposition.

Mr. Wells: Or any of the matters that are set out there?

[441] Mr. Fenton: That's correct.

The Court: All right. Pages 1 through 99 on the Drobny deposition has been offered by the government. Does anybody else have anything further, or is that the deposition? That's about all of it. Any objection?

Mr. Schuler: I believe it is. We have nothing further to offer.

The Court: All right. Let's go to Mr. Robert V. Wolf.

Mr. Fenton: Mr. Wolf, plaintiff offers in evidence Pages 1 through 13, Line 14; Page 15, Line 2, through Page 19, Line 16, and Page 34 through Page 53.

Mr. Schuler: We offer in the rest of it, Your Honor.

The Court: All right. This entire deposition is in.

Mr. Schuler: Yes.

The Court: I believe the next one is Mr. Cleo Travis Harris.

Mr. Fenton: On Mr. Harris, plaintiff offers in evidence Pages 1 through 6, Line 10.

The Court: Anything further?

Mr. Schuler: We would like to add Pages—the cross-examination on Pages 7 and 8.

The Court: All right. Mr. John L. Garrett.

[442] Mr. Fenton: On Garrett, plaintiff offers in evidence Page 1 through 3.

The Court: One through three?

Mr. Fenton: Correct.

Mr. Schuler: And we would add Pages 4 and 5, and Page 15, Line 18 to Page 17, Line 25.

The Court: That takes care of Mr. Garrett. If so, we go to Daniel J. Fryer.

Mr. Fenton: On Mr. Fryer plaintiff offers in evidence Pages 1 through 26.

Mr. Schuler: Let's see, is t the entire deposition?

Mr. Fenton: Correct.

The Court: Wait a minute.

Mr. Schuler: We have nothing further.

Mr. Wells: If Your Honor please——

The Court: I don't have but fifteen pages of that deposition. Wait a minute. I don't have Mr. Fryer. I was looking at Mr. Conner. I don't have Mr. Fryer's up here.

Mr. Wells: Judge, while he's checking that, can I go back to Garrett?

The Court: To which one?

Mr. Wells: Garrett.

The Court: Yes, sir. I have it before me.

[443] Mr. Wells: Page 28. These are unnumbered lines starting with cross-examination.

The Court: The union wants Page 28? The cross-exam. How far?

Mr. Wells: Concluding that cross-examination through Page 30, the middle of Page 30.

The Court: All right, sir. Now, let me have Mr. Fryer again. That is one through——

Mr. Fenton: One through twenty-six.

The Court: That is the entire deposition, so that's fine. Now, on Mr. Conner.

Mr. Fenton: On Conner, plaintiff offers in evidence Pages 1 through 13.

The Court: Is that the entire deposition?

Mr. Fenton: Yes, sir.

Mr. Schuler: Nothing further there.

The Court: All right. Now, I assume there is no objection, or you would have made them as we go through this.

Mr. Schuler: That's correct, Your Honor.

The Court: Okay. The deposition of Mr. Chaplin.

Mr. Schuler: Your Honor, before you pass Chicago, we'd like to offer the deposition of Mary J. Castrale, Page 1 through 26.

[444] The Court: One through what?

Mr. Schuler: One through twenty-six.

The Court: Now, wait a minute. Yes. Anything further on that deposition before we leave the Chicago depositions?

All right. We'll go to Oklahoma.

Mr. Wells: So I understand the record, I take it nobody tendered the Hurt deposition?

Mr. Fenton: That's correct.

The Court: All right. How about Mr. Chaplin?

Mr. Fenton: From Mr. Chaplin plaintiff offers in evidence Page 1 through 58, Line 6.

Mr. Schuler: Your Honor, it might save time there. We want to have the entire deposition put in. If the plaintiff wants to indicate particular parts of it, that's all right with us, too.

The Court: All right. Do you want to designate the part as your tender and just let him tender the rest of it? Go ahead. I'm going to read the whole thing.

Mr. Fenton: Yes. Page 1 through 58, Line 6; Page 77, Line 8 through Page 94, Line 21 and Page 111 through 116, Line 14; Page 126, Line 7 through 129, Line 4.

Mr. Schuler: We would like the rest of the deposition put in, please, sir.

[445] The Court: All right. That takes care of Mr. Chaplin. Let's go to Mr. Walter.

Mr. Fenton: On Walter plaintiff offers in evidence Page 239 to Page 268, Line 20.

Mr. Schuler: We would add Pages 269 and Pages 280 through 285, plus 287 and 88.

The Court: All right.

Mr. Wells: May I have just a moment, please, sir?

The Court: Yes, sir.

Mr. Wells: I have nothing to add to Walter. The form in which the record is made, it includes under the same cover the depositions of Jackson and Henderson, which I take it are not—and Harrison, which are not tendered?

Mr. Fenton: Mr. Henderson's deposition was summarized. The other two that you mentioned are not tendered.

The Court: All right. That takes us down to Don Capshaw.

Mr. Fenton: On Mr. Capshaw plaintiff offers in evidence Pages 289, Line 23 through Page 308.

Mr. Schuler: We'd like to put in the remainder of that deposition.

The Court: All right, sir. That takes care of, I believe, of Oklahoma City, does it not?

[446] Mr. Wells: Except Mr. Highfelt. I take it, it, likewise, is not tendered, right?

Mr. Fenton: Correct.

The Court: All right. In Dallas, Mr. Cathey.

Mr. Fenton: On Mr. Cathey, plaintiff offers in evidence Page 1 through 76, Line 19 and Page 123 through 196, Line 18.

Mr. Schuler: We would like to add the cross-examination on Pages 76 to 89.

The Court: Anything from the union?

Mr. Wells: I have nothing on Cathey.

The Court: All right. We'll go to Mr. Miller.

Mr. Fenton: Plaintiff offers in evidence Pages 1 through 27.

Mr. Schuler: We have nothing there, Your Honor.

The Court: And the union?

Mr. Wells: Just a moment, Your Honor.

The Court: Yes, sir.

Mr. Wells: We would tender the entire deposition.

The Court: All right. Go to San Antonio depositions. Mr. Robert M. Mitchell.

[447] Mr. Fenton: On Mr. Mitchell, plaintiff offers into evidence Pages 1 through 22.

Mr. Schuler: Your Honor, excuse me just a moment.

The Court: Yes, sir.

Mr. Schuler: And there was one additional deposition there in Dallas that we would like to tender.

The Court: All right. Let's get it in at this point then.

Mr. Schuler: Robert Dickens.

The Court: Robert Dickens?

Mr. Schuler: Page 1 to 37.

The Court: Just the one page, or did I misunderstand?

Mr. Schuler: One through thirty-seven.

The Court: All right. Anybody else wish to put anything in?

Mr. Wells: While we are in Dallas, Price and Hicks, having both testified, their depositions are not before the Court, as I understand it.

Mr. Fenton: That's correct.

The Court: Pages 1 through 37 will be read by the Court on the Dickens' deposition. That puts us down to Mr. Robert M. Mitchell.

Mr. Fenton: On Mr. Mitchell, plaintiff **[448]** offers in evidence Pages 1 through 22; Page 29, Line 21, through Page 32, Line 1; Page 33, Lines 1 through 19, Page 41, Line 15 through Page 47, Line 22.

Mr. Schuler: We would like to add the remainder of the deposition.

The Court: All right. Mr. Barnes.

Mr. Fenton: On Barnes, Pages 1 through 28, Line 24.

The Court: One through twenty-eight?

Mr. Fenton: Yes, 1 through 28, Line 24. Page 78, through 79, Line 12 and Page 92, Lines 11 through 25.

Mr. Schuler: We would like to add the remainder of the deposition.

The Court: All right, sir. S. P. Walker, I believe, is next.

Mr. Fenton: On Walker plaintiff offers in evidence Pages 1 through 12, Line 15.

Mr. Schuler: We would offer all of Pages 12 through 14.

The Court: Is that the remainder? Yes, that is the remainder, isn't it?

All right. Mr. Martinez.

Mr. Schuler: Mr. Martinez, plaintiff offers in evidence Pages 1 through 13, Line 17.

Mr. Schuler: We would offer all of Pages **[449]** 13 through 16.

The Court: Anything further from the San Antonio depositions?

All right. We'll go to the Memphis, Tennessee depositions and we will start with Don Allen.

Mr. Fenton: From Mr. Allen plaintiff offers in evidence Pages 1 through 18.

Mr. Schuler: We have nothing further.

The Court: That's the entire deposition, I believe, there, isn't it?

Mr. Wells: May I have just a minute to get these Memphis ones in order, Your Honor?

The Court: Yes, sir. You got the list there, or you want me to call them out for you? Go ahead and get them in order. We'll hold up here a minute.

Mr. Wells: Thank you, Judge.

The Court: All right, sir. We are now down to Mr. Arthur Leon Thornton.

Mr. Fenton: On Mr. Thornton plaintiff offers in evidence Pages 1 through 30, Line 15, and Page 43, Lines 12 through 24.

Mr. Schuler: We'd like to add the remainder of that deposition.

The Court: James L. McNeal.

Mr. Fenton: On McNeal, plaintiff offers **[450]** in evidence Pages 1 through 23, Line 14.

Mr. Schuler: We have nothing further.

The Court: Mr. Clayborn Moman.

Mr. Fenton: On Moman, plaintiff offers in evidence Pages 1 through 21.

Mr. Schuler: We have nothing further there, either.

The Court: Okay. Warren Chase.

Mr. Fenton: We are not offering Mr. Chase's deposition.

The Court: Anybody wish to offer anything from Mr. Chase's deposition?

James H. Walker, I believe, is next.

Mr. Fenton: Plaintiff offers in evidence Pages 1 through 32.

The Court: Thirty-two?

Mr. Fenton: Correct.

Mr. Schuler: We have nothing further.

Mr. Wells: Nothing.

The Court: Mr. W. G. Gately.

Mr. Fenton: On Mr. Gately plaintiff offers in evidence Pages 1 through 30.

Mr. Schuler: We have nothing further.

The Court: Mr. Fontain Earnest Yount, Jr.

Mr. Fenton: Mr. Yount, plaintiff offers **[451]** in evidence Pages 1 through 35.

Mr. Schuler: We have nothing further on that.

Mr. Fenton: Now, Charles Edwin Taylor was inadvertently included in here. His deposition was also summarized.

The Court: You mean on the pre-trial order?

Mr. Fenton: Right.

The Court: I am using the list. Mr. Robert T. Jones, Sr. is next.

Mr. Fenton: On Mr. Jones plaintiff offers in evidence Page 1 through 6, Line 20.

The Court: Twenty?

Mr. Fenton: Correct.

Mr. Schuler: We would add Page 6, Line 23 to Page 8, Line 4.

The Court: Mr. Houston is not to be offered?

Mr. Fenton: That's correct.

The Court: Does that complete the depositions for the plaintiffs?

Mr. Fenton: That completes our depositions, Your Honor, and as I stated before, of course, we offer the exhibits which were identified through these depositions.

[452] The Court: Yes. Where are these exhibits, what box are they in around here? I want to separate them.

Mr. Fenton: I think most of them are identified as to what cities they came from. Most of them are in packets like this, Your Honor.

The Court: Well, we'll go off the record.

(Discussion between Court and Counsel off the record.)

The Court: Mr. Wells, have you got some——

Mr. Wells: Yes, Your Honor. I missed one. The last deposition.

The Court: They are not going to offer that, Mr. Houston, I believe.

Mr. Wells: No, Jones.

The Court: Oh, pardon me. Mr. Jones, they want pages 1 through 6, Line 20 from the plaintiffs, and Page 6, Line 23 through Page 8, Line 4 for T.I.M.E.

Mr. Wells: I want Page 8, Line 8 through the end of the deposition. I think that makes the whole works.

The Court: I believe it does, too, with the exception of a line or so.

Mr. Wells: Houston is not——

The Court: Not tendered.

Mr. Schuler: Your Honor, I'd like to have a few minutes on that.

The Court: Yes, sir.

[453] Mr. Schuler: Houston's name originally was on the pre-trial order for the plaintiff, and we had wanted to put in a few pages, so I'd like to review it briefly to see.

The Court: All right. We'll take a recess here and give you a chance to do it now. You have some interrogatories. What is the best way to get those in the record, like we are doing the depositions, or do you want to read them or what?

Mr. Fenton: That will be preferable to us, Your Honor, just read the numbers that we are offering into the record, rather than the interrogatories and answers themselves, since they are a part of the pleading file.

The Court: I wonder if we—during the recess would you ask the—are there several sets of interrogatories or just——

Mr. Fenton: The one that we are offering is just one set of interrogatories, and one set of answers.

The Court: Would you assist the clerk in getting those out during the recess and we will come back and take those that way.

Now, when we get those in the record, where is the plaintiff?

Mr. Fenton: That will conclude our case in chief, Your Honor.

The Court: All right.

(Recess)

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[454] The Court: All right. Plaintiff may proceed.

Mr. Fenton: Your Honor, we would like to offer into evidence certain interrogatories.

Mr. Schuler: Your Honor, before doing that, there was one remaining deposition that we wanted to review. That was the deposition of Mr. Houston at Memphis.

The Court: I have it right here.

Mr. Schuler: And we would like to introduce Page 2 through Page 4, Line 11.

The Court: Anybody else got any portion of the Houston deposition they want introduced?

All right. Now, let's go to the interrogatories. Which ones does—I have got them marked here in the file.

Mr. Fenton: These are interrogatories the plaintiff served on defendant T.I.M.E.-DC on March 29th, 1971, and answers thereto provided by the company on May 25th, 1971, and in their answers the company set out the interrogatory before the answer so we can just use——

The Court: Yes, sir. There ought to be a rule to that effect. I am sure glad to see it's done that way. Which ones are you tendering?

Mr. Fenton: The ones we are tendering are numbers 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 21, 22, 23 and 24.

[455] Now, with respect to the company's answer to Interrogatory Number 1, and that part of the answer beginning at the very bottom of Page 2, they set out National Master Freight Agreement in Southern Conference Area, Local Pick-up Delivery Supplemental Agreement for the period of 1/1/70 to 6/30/73, and right after that they quote an article from the National Master Freight Agreement. They have Article 1, Section 2, with the consent of the company. That should be Article 2, Section 2, from the National——

The Court: At the bottom of Page 2?

Mr. Fenton: Right.

The Court: I am just going to change the original if there is no objection.

Mr. Fenton: I am referring to the very bottom line on Page 2.

The Court: Interrogatory Number 1.

Mr. Fenton: Which says Article 1, Section 2, should be Article 2, Section 2.

Mr. Schuler: We are agreeable to that, Your Honor.

The Court: All right. I am just going to change the original accordingly. Now, does——

Mr. Wells: If Your Honor please, we object on behalf of the defendant unions to the Court's consideration of that part of the answer to Interrogatory Number 1, which **[456]** calls for and is a conclusion with respect to the legal effect of the contract.

The Court: The most that I see here, they are just quoting the contract.

Mr. Wells: Well, but they were first—we have no objection to the provisions of the contract being before Your Honor, and Your Honor interpreting those contracts. We do object to this form of eliciting a conclusion, for the record, of whoever answered these interrogatories, as to what the contract means. The contract speaks for itself and should be interpreted by the Court.

The Court: Well, I don't see that they have done that in their answer, but I haven't examined it carefully. If they have, you are correct.

Mr. Wells: The question is how does the company interpret any provision of any present or past contract with respect to prohibiting various people to do so and so. They answered yes.

Mr. Fenton: Your Honor, the company is a party to the contract, and of course, one of the issues in this case is whether or not the seniority system may have an adverse effect on certain alleged discriminatees. Certainly, as a party to that contract, the company is in a position to give its interpretation as to what effect the provisions of that contract have.

[457] Mr. Wells: If Your Honor please, they are not in a position to interpret it for us.

The Court: Well, I don't know as I interpret the question as you do. It is just does the company interpret any provisions. You've got a contract that they think relates to that field set forth in the contract.

Mr. Wells: It's up to the Court to interpret the legat effect of it.

Mr. Fenton: Well, Your Honor, we believe that the way this contract has been interpreted in the past, and the way it is interpreted at the present by one of the parties, is very relevant to this action.

The Court: Let me examine it just a little more here. You're talking about Page 1 alone here, as I gather. The rest of the answer is nothing but quoting the contract itself.

Mr. Wells: Right.

The Court: Right.

Mr. Wells: I am referring really to the first—to the first word in the answer.

The Court: Yes.

Mr. Wells: That other phrase is an interpretation.

The Court: Well, I'll tell you what, I am going to admit that, overrule the objection, except whether **[458]** or not the company is legally bound by the way they interpret it is a matter of law for the Court, but I think it is proper evidence for the company to say that we feel we are bound in a certain manner. So I will admit it for that purpose, but that doesn't mean as a matter of law that they are legally bound. That's just their interpretation, and not a legal finality.

Mr. Wells: Though these other objections, if Your Honor please, I am referring now to the last paragraph on Page 1, where they are listing various contracts, they refer to the National Mechanics Agreement with Local Union 327 for a period of 4/1/58 to 3/1/61, to which we object for the reason that it is remote in time, and for the further reason that it is a contract with Local 327, and these interrogatories have to do with the consolidated Civil Action Number 5-868, which you will recall was filed over there in Tennessee, and then moved over here, and consolidated with the big case.

Now, they are suing 480 over there, but they are bringing before you an ancient contract with Local 327. We say that is wholly irrelevant and immaterial and should be stricken.

Similarly, I will make similar objections with respect to the Mechanics Agreement with Local 327 for the period 2/1/61 to 1/31/64, which is on the second page, and I thought, although in candor, it is not quite as remote when you get up **[459]** to 2/1/64 to 1/31/67, but the objection will be—should be lodged in the record at the separate objection to each of those contracts for the reasons stated.

The Court: All right.

Mr. Fenton: Your Honor, at the time that the company had these contracts, Local Union 327 of the Teamsters represented the servicemen at the Nashville terminal. Now, at the present time, Local 480 represents the servicemen but at the time these contracts were in effect they were represented by Local Union 327, and certainly these contracts are relevant. They are relevant to show a historical pattern or practice of discrimination against black servicemen at that terminal.

The Court: I'll overrule the objection. I agree with Counsel on that.

All right. Now, anybody else want to tender any further questions on these interrogatories at this time, or do you want to defer it until later or——

Mr. Schuler: We have indicated in the pre-trial statement that we want to rely on the remaining interrogatories simply to give the Court a complete picture as to what was asked. That would be Interrogatories 9, 16, 18, 19 and 20.

The Court: All right. For the purpose of the record, the entire interrogatories are introduced and **[460]** subject to the limitations I placed on the admissibility of the legal interpretation a moment ago, of course.

Mr. Wells: If Your Honor please, I will call your attention to the fact that Interrogatory 2 and 3 also call for the company's interpretation of what contract language means as a matter of law, and there is the same objection previously stated.

The Court: My ruling will be the same. I'm not going to construe that as a legal interpretation, but as a practical way in which they operated under the contract, or feel they should operate under it. Now, anything further from the government?

Mr. Fenton: Your Honor, that concludes the government's case in chief.

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[464] **ROY M. WILKINS**

called as a witness at the instance of the defendant T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schuler

Q. Will you state your full name for the record, please? A. Roy M. Wilkins.

Q. What is your business address, Mr. Wilkins? A. Post Office Box 2550, Lubbock, Texas.

Q. What company are you with and what is your position? A. T.I.M.E.-DC. I am president of that organization.

Q. How long have you been president of that organization, Mr. Wilkins? A. Since September of 1971.

Q. And how long have you been with T.I.M.E., or any of its predecessors? A. Twenty years.

Q. Would you briefly trace your history in the motor carrier **[465]** industry? A. I have first started in the business in 1932 with an organization called Hayes Freight Lines, which is no longer a company as such, and was with that organization in various capacities. I started out as a clerk, dock man, a driver.

Also, during my employment with them, I went to the University of Illinois and secured a degree thereafter, which I went back with the company and worked for them as an auditor.

In 1941 I left that organization and went with Horton Motor Lines in Charlotte, North Carolina as a safety supervisor. That company became a part of a merger into what is today Associated Transport, Incorporated, New York City. I served there as supervisor of safety and ultimately as a director of safety and personnel for the company, leaving them in 1951. I went to Nashville, Tennessee with the Super Service Motor Freight Company as a director of safety and insurance, ultimately be-

coming a vice president of operations for that organization, which was acquired by the T.I.M.E. Freight operation in 1964. At that time I moved to Lubbock, Texas as a director of terminals. In 1969, which was the time of the merger into T.I.M.E.-DC, I became a vice president of the Southern Region of that organization, and in 1970 was vice president of planning and research, and then in 1971 became president of the company.

Q. What are your responsibilities generally as president? A. Well, my responsibilities, of course, are to the chief **[466]** executive officer, and the Board of Directors of our company in terms of conducting the daily operations of our organization.

Now, this is all phases of the organization and I work through our executive staff, which consists of an executive vice president, vice president of marketing and sales, vice president of maintenance and property, vice president of operational services, vice president of finance, vice president of traffic and vice president of planning and management controls; the conducting of the daily affairs of the company through this organization that I operate.

Q. Through what officer or key employee are the labor relations and personnel matters handled? A. We have a director of industrial relations and personnel, Mr. Jim Henry, who reports directly to our executive vice president in the organization, and working with him we have a manager of personnel, Mr. Chuck Hutchison, who works directly for Mr. Henry. This is the group that administers personnel and labor practices.

Q. How generally are the personnel and labor relations and industrial relations policies originated and implemented within the company? A. The procedures and practices that we are using really originate with this group in industrial relations, and personnel in terms of their recognition of perhaps need and change. They are submitted, of course, through our vice presidents' staff. **[467]** In other words, they come directly to the ex-

ecutive vice president in the nature of a recommendation, after which they are reviewed. Then, the group, pending the decision that is made at that level, a group then administers the policy and procedure through several sources, directly with the terminals in some instances, through our regional organizations, and through what we call a manual of instructions. We refer to it as MOI in our company, which outlines the broad general practices to be followed in handling our personnel and labor matters.

Q. Will Mr. Henry and Mr. Hutchinson be available to testify in this proceeding? A. Yes, they will be.

Q. Thank you. Can you tell us the general purpose of the personnel and industrial relations policy, procedures and standards of the company? A. Well, of course, in the labor relations, they are charged with the responsibility of seeing that we are conforming to various labor contracts, which are in existence throughout our operation. They police this type of activity insofar as personnel is concerned. They are involved in making certain that we secure the best qualified people we can locate in terms of local situations, and local needs. In other words, they are working with the terminal managers constantly on the selection and securing of adequate personnel to run our company.

[468] Q. Thank you. I'd like to ask you some questions generally about the motor carrier industry that you have been a part of for many years. Can you tell us something about the industry itself and how it has grown? A. Well, it's been an industry that has had tremendous growth over the years, very rapidly in most instances. Evidence of this might be one statistic that in 1935 there were three and a half million trucks registered in the United States, and in 1970 this has grown to seventeen and three-quarter million trucks in operation. The industry itself and its rapid growth has taken place primarily through the development, of course, of additional traffic, but

when you look at the individual companies that make up the industry, they have been formed basically through mergers or acquisitions.

In 1945 the average truck operation consisted of only eighty-nine employees. In 1970 the average for all carriers in the industry had jumped to four hundred employees. This is an average, and there are many organizations in the business today who number in the thousands. Ours is one of them. We have approximately six thousand employees in our company today.

During this development, of course, this rapid development, there's been quite a change in the nature of the companies themselves. The trucking industry started out with pretty much a one-man-rule type of thing and the pioneers in the business, so to speak, were the men who have the courage to **[469]** start out in a new industry. They ran the show and this occurred for a good many years.

We have gone in the period of time that I mentioned from workers, so to speak, to really job specialist throughout the industry. Of course, the size of our vehicles has changed presently from the small trucks to the large tractor-trailer units you see today, and even doubles in some areas. We have gone from the old hand-cranked adding machines to computers. We've gone from individual negotiated wages, shall we say, to nationwide contracts covering various job classifications and employees. We have gone from small geographical areas of operation for the individual carriers to nationwide group structures. We have gone from limited state and federal regulations to many agency laws and controls throughout the country, and of course, as I say, from the one-man rule, so to speak, to highly sophisticated management techniques today in the industry.

Q. Now, has that pattern that you attribute to the industry as a whole been generally followed in the development of T.I.M.E.-DC? A. T.I.M.E.-DC, as it exists today, is perhaps one of the prime examples in the United States of this type of growth of common carriers in the business. It's made up, I mean, the

company, as it exists today, and was formulated in January of '69, was made up of three organizations, the old T.I.M.E. Freight **[470]** operation, so-called DC International operation, and one that we refer to as LASME, L-A-S-M-E, which stands for Los Angeles Seattle Motor Express Company. These are three organizations that has made up T.I.M.E.-DC.

Now, taking just T.I.M.E. alone, just to show you the type of growth that this has had, in 1929 Mr. Arno Dalby, who is currently still our chairman of the Board of Directors, started this company and it consisted only of one truck running between Post, Texas and Lubbock, Texas. This was the beginning of the T.I.M.E Freight organization.

Q. Mr. Wilkins, let me interrupt you for a moment. Have you caused to be prepared two exhibits, one designated as QQ, that states briefly the history of the development of T.I.M.E. Freight, and also RR, which is a series of maps to show in sequence the mergers and changes in operations of T.I.M.E. Freight? A. Yes, sir. These maps do reflect this, and the historical exhibit reflects the growth of the organization.

Q. All right. Will you make reference to the chart as you go along and I will move from one page to another. A. All right. From the original beginning in Post to Lubbock, as I mentioned, which was in 1929, I think the company at that time, when it was organized, had some four or five employees. This is all that it consisted of. By 1952 it had grown to a hundred and thirty employees, and ran between Lubbock **[471]** and El Paso, Texas basically, as you see the red line on this chart here. This was the growth that occurred in that period.

Now, in November of that year, the next chart, the company acquired Southwestern Freight Lines, which is the red line addition shown on this chart, which extended the company from El Paso into Los Angeles, serving the intermediate points indicated there of Phoenix and Tucson. This company was acquired under a temporary authority by the commission, which

means that the ICC Commission, Interstate Commerce Commission, felt that there was sufficient evidence to indicate that salvation of the Southwestern Freight Lines rested in somebody else taking them over. They had reached the point where they could not successfully operate, so this is what is known as a temporary authority in the industry, and this company, along with many others we will point out, were acquired under this procedure.

This jumped the number of employees to three hundred ninety. General offices, of course, they existed at Phoenix at that time, had to be consolidated into one general office, which was in Lubbock, Texas.

Freight handling procedures were changed considerably due to the fact that the Southwestern Freight Line up to this time was primarily what is known in the business as a truckload carrier, which meant that they handled basically volume shipments, large shipments in excess of ten, twenty thousand pounds per shipment, where T.I.M.E. Freight had built their **[472]** company, and has always been what we call a LTL carrier, which handles the smaller shipments. Of course, we do handle the larger ones, too. There was a basic change in the type of operation involved here.

Talking with many of the people that are still here from that old operation, apparently there was quite a drastic change in their method of handling people. I recall discussing the situation with one individual who said that they in the Southwestern days, there was no—nothing unusual to work all day and then get in the truck and drive all night to where they were going to unload the next day. T.I.M.E. Freight had never operated under this premise, and so there was quite a change in the administration of personnel practices at that time.

In 1953, the company applied for authority from the Interstate Commerce Commission to extend the operation from Lubbock eastward to Oklahoma City. This is the red line that you notice on this particular chart.

The Court: This wasn't a merger?

A. (By the witness) No, just a pure acquisition. No merger. Just extended the authority granted under the public convenience and necessity application by the Interstate Commerce Commission.

The Court: You used the word "acquisition". You're not talking about acquiring another company, just acquiring a new route.

A. (By the witness) Pardon me. I used the wrong phrase.

[473] The Court: I understand.

A. (By the witness) It's an application, and the authority was granted from the Commission on this extension.

Q. (By Mr. Schuler) Mr. Wilkins, I notice on the chart you have designated Oklahoma City authority. Basically, are there any other requests to the ICC for a grant of operating authority that have been involved in the growth of T.I.M.E.-DC, or have most of the changes come about through mergers? A. (By the witness) I believe this is the only one that was secured in this manner.

Q. All right. I want to exclude any type of applications that might involve a plant site of a single shipper or alternate routes. A. Oh, yes.

Q. But in the main creation of the lines of T.I.M.E., this is the primary case where you have sought and got an extension from the ICC. A. This is correct. The rest of them have been mergers or acquisitions of other operations.

Actually, in the beginning of this operation, there obviously was not too much involved, because it was merely an extension of authority that was already operating. A lot of the vehicles and people that were acquired in the purchase of the Southwestern operation were utilized in moving this operation further east into Oklahoma City.

[474] Now, in 1954, which is the next chart here, T.I.M.E. Freight acquired or purchased the Herrington Truck Lines, which extended the operation further from Oklahoma City into Little Rock and Memphis. This was a purchase and was merged into the T.I.M.E. Freight organization, involving the usual difficulties with mergers of this type, relocation of general offices, changes in actual handling of freight itself, retraining people in connection with this activity. In other words, when you add onto an operation, you not only have the job of retraining or training the new people that are brought into the organization, but also a retraining system is needed for the former employees simply because you are handling freight differently now.

Just an example, under this type of organization, up until the addition of this Herrington, all freight moving east of Oklahoma City was what we call interline traffic. In other words, it would be taken to that point and then given to another carrier after which there is no obligation or responsibility as far as the originating carrier is concerned. When you change into this type of operation suddenly this freight now you're handling all the way to Memphis, so that there is quite a difference in the manner in which vehicles are loaded in terms of drivers that are making pickups, what they can tell their customers, yes, we have the service to Memphis, this is the way we handle this type of thing. This is true, of course, in all additions to an operating facility such as this represents.

[475] Q. Did that involve any change in the billing and the accounting for your traffic? A. Many times it does simply because you get into new areas, you have to start accumulating information for various states involved. In my experience, it is my belief, and I think I am correct in this, that every time a company is added to anybody's operation, you always wind up revising your freight bill. You have a new concept that has to be taken care of, and you have to have additional copies. Sometimes I think we are paper manufacturers rather than truck operators, but there is an awfully lot of paper work involved

in the movement of our freight. A change of the accounting system is required every time you add to an operation, as was done in this case.

Q. In the Herrington purchase, did you commence to handle any new types of commodities, such as explosives or anything different from your general line of commodities? A. I am not certain about that particular part of the operation. This does get involved, of course, where you have some companies who have authority to handle dangerous articles, and commodities, or explosives.

I believe in this case, though, now that I recollect, that there was in existence in terms of that particular piece of operation.

Q. Would that require different handling methods and different equipment? **[476]** A. Oh, yes, there was far more safeguards in terms of the proper handling of so-called dangerous articles and explosives than in just the general commodities themselves. There are certain things that drivers must know. They can't mix, certain commodities cannot be mixed on the same vehicle. There's a placarding requirement that over certain weights of certain commodities you have to have a placard on your vehicle to identify what is being carried. There are also restrictions as far as the man himself is concerned as to meeting certain physical requirements that are not required in all cases for general commodity employees.

Q. All right. What was the next merger? A. 1957. Again, under a temporary authority application, permission was granted to T.I.M.E. Freight to take over the operation of Southeastern Truck Lines, which was headquartered in Nashville, Tennessee.

The company was in tremendously bad financial condition, Southeastern was, at the time of this acquisition. The first impact, of course, the first thing that had to be done here was to change that posture of this particular part of the operation. Three small terminals were closed in the Tennessee and Kentucky area almost immedately after T.I.M.E. Freight acquired

this. These were terminals that had employees and trucks and everything that goes with them, but were determined very rapidly to be unprofitable and drains on the organization, and these were **[477]** closed to attempt to improve the earning capability of this particular part of the operation.

The road fleet, in other words, these are the over-the-road vehicles I'm speaking of, at Southeastern were relatively new, however, the former management of the company had purchased what had later developed to be a pretty unsafe unit as far as highway operation was concerned, and these were very shortly after the acquisition taken out of service and replaced by a different type of equipment from the T.I.M.E. Freight organization.

There was, of course, the matter, as has been true of all of these up to this point, a matter of consolidation of operating facilities at the tack point, if you will, tack meaning the point at which the two operations, the old one and the new one, coming together, are joined.

Q. Excuse me. Was that Memphis? A. This was Memphis in this particular case. In other words, here you have a situation where both companies maintained a terminal facility, a complete staff of employees in Memphis, and you have this type of situation of attempting to--not attempting to, you do it, merge the two facilities into one.

Q. I notice that some of the operating rights in the Southeastern purchase are north-south routes where most of the previous routes were east-west. Did this occasion any different type of problems? A. This presented somewhat of a problem only in the fact **[478]** that Southeastern, which is the red-line operation here, was primarily a local, small local carrier, and when I say local, they only handled traffic just within their own operation. Now, with the extent of the authority into, as far west as Los Angeles, it did require a change in the characteristics and approach to sales and operating problems from the South-

eastern into the T.I.M.E. Freight organization. The fact that it went north-south a little bit as opposed to the other did not have a bearing, but it was that change in characteristics of the carrier from a regional licensed-type of traffic to the, what we call, long-haul traffic, which would extend from that area to the West Coast and the intermediate points.

Q. In your sales solicitation, then would your salesmen or would the salesmen in the Southeastern system change their primary selling job, which had been, let's say, between Memphis to St. Louis, to a job of selling freight services from St. Louis to Los Angeles? A. Yes, sir, this is the basic change in it. Of course, all of your personnel are involved in this type of thing, too, but your sales particularly were heretofore interested in securing traffic basically between the points in which they operate, and now they have a whole new outlook as to the traffic that they are attempting to obtain for the company.

Q. What was the next merger? A. I might point out here before we leave this chart that **[479]** our mergers up to this point have been pretty much in what we would call a straight-line operation, where you are adding on to one end or the other of your original operating authority, with just one point of contact.

Now, the next purchase, which was the Powell Brothers in 1959, we got into the duplication of terminals, more than just one. In other words, for the first time here we are spreading out into some other directions, and this purchase, which again was a temporary authority-type of acquisition, had duplicate terminals in three cities, in Oklahoma City, Little Rock and St. Louis. Here became the problem of merging the physical operations and the people, rescheduling of road vehicles, so that for the first time we got into a multiple terminal type of merging.

This Powell Brothers, I believe I mentioned, was of temporary authority again. Some of the problems, also, in particular in connection with this one, was the fact that here they had a

comparatively old fleet of vehicles. In other words, they had, in an attempt to solve some of their financial problems, they had neglected to maintain their vehicles or replace them in accordance with good practice, and it was necessary that T.I.M.E. Freight just practically replace this entire fleet of vehicles, which they did from some of the older T.I.M.E. Freight vehicles, but they were still newer than the ones that Powell Brothers were operating at that time.

[480] Q. Did you run into any new accounting or billing methods or problems with this particular merger? A. Yes, with this one, we did. Of course, the relocation of the general office, which was in Springfield, Missouri, to Lubbock, Texas, again it required a complete revamping of the old Powell Brothers system of accounting, which was pretty much a manual-type operation, as opposed to a machine accounting, and to include the additional territory into the system, a change was made, yes. When I speak of accounting system changes, we are talking, of course, not in terms of changes in ICC requirements as to the accounting, but in the procedures and details of the way you accumulate your accounting information. This is affected by each of these.

Q. Now, in a merger such as this, would your, let's say dock handlers and city drivers in a particular city that had been acquired, have to change their handling methods and require any retraining in order to accomplish that? A. Yes. You always run into that. First, you have a new company moving in, which always has different requirements, or seems to have, in terms of accounting for freight, loading of freight. When I say accounting, I'm talking about the physical checking of it. In this instance, I'm talking about the physical checking of the shipments that are being handled, number of pieces and the size and the weight, this type of thing. T.I.M.E. Freight has had a practice all these years, as **[481]** a new company is added into the operation, the T.I.M.E. Freight systems are introduced. This requires a training ses-

sion in terms of change from what they have been accustomed to. There are many different systems of accounting for the freight, or tabulating, manifesting, dispatching, and in order to have a uniform system, it is necessary that retraining sessions be done with these people. You also run into this type of thing where a carrier such as Powell Brothers, which operated basically into Missouri and Arkansas and one point in Oklahoma there, the state laws governing the weights and sizes of vehicles differ to the extent that these people who had formerly never loaded vehicles that are destined all the way to California suddenly find themselves having to load at a different weight category because of certain revisions.

There are also imports in some of the states, which require a certain type of manifesting on certain commodities that may be on a vehicle moving through the state, so again, as you introduce new people to new situations, there is a tremendous job of acquainting them with all of the facets of the new operation.

After this, in 1961, I don't believe this was on the chart, this was just in between that chart and the other one, there was a small purchase which involved authority only, which was American Transfer and Storage Company, and it was explosive authority. In other words, there was a gap in this Powell **[482]** operation where we could not transport explosives through a certain section, so T.I.M.E. Freight did purchase the operating authority from American Transfer and Storage.

Now, the chart here before us is the acquisition of the Super Service Motor Freight Company of Nashville, Tennessee. This company was domiciled in Nashville, headquartered there. It was a sizable company. It, itself, had, since 1952, been made up of three smaller companies, Norell, which was in northern Alabama, Harrison operation, which extended from New York City to Boston, and St. Louis-Nashville,

which ran from St. Louis to Chicago. So this purchase of Super Service Motor Freight Company took place in 1964. The man who was president and owner of the company was in extremely bad health, had been for several years and the company was in financial difficulty at the time of this acquisition by T.I.M.E. Freight. There were again multiple terminals where we had existing, both companies had existing facilities in St. Louis, in Evansville, and in Nashville, Tennessee, quite sizable operations in Nashville, Tennessee. There were—pardon me.

Q. Excuse me. Did you get into any problems with this merger as to work rules involving some of your various city and dock people? A. St. Louis and Nashville particularly, we had a problem with resolving this, and actually it has not been completely resolved even today in St. Louis, particularly. Each company **[483]** has, in addition, even though there is a uniform labor contract, so to speak, there are differences in work rules. Example: St. Louis, the former employees of Super Service Motor Freight Company had been for a good many years, and were permitted to perform what we call a utility man function, which means that he could check freight, load freight, drive the Towmotor, anything that was involved in the handling of the shipments across the dock in the St. Louis terminal. The T.I.M.E. Freight employees had three different classifications to handle this work chore. In other words, they had a checker, a man who really checked the freight, and then they had a dock man, which handled two-wheeled carts or four-wheeled carts in the movement of freight, and then a forklift operator. In other words, there were three different classifications of employees, so that the merging of these functions, or these two groups into one uniform situation has been a chore. It still has not been accomplished. When I say it still has not been completely resolved, we still have a problem with what a man can do on the dock, so to speak.

We had a somewhat similar problem in Nashville that involved our drivers who operate vehicles just strictly on company premises, which we call hastlers. These men just move vehicles around our terminal facilities for the most part.

In the T.I.M.E. Freight organization, these yard men could move vehicles for shops or they could move for the terminal. In other words, they could move vehicles in and out **[484]** of the dock operation or they could move vehicles in and out of the shop. In the Super Service organization we had separate sets of hastlers. In other words, one man could handle the freight to and from the freight dock, or move the vehicle to and from, but another man had to handle the vehicle if it was going in or out of our maintenance shop, so that here again, when you put two units of these types with given work rules together, you do experience difficulties.

Q. Have those difficulties been resolved? A. In Nashville they have been, yes, sir.

Q. All right. Did you experience any changes with this merger in the types of trailer equipment that you utilized? A. Yes. The Super Service company had vehicles that were purchased and fitted the needs of the operation from Nashville to the East Coast. We had, for example, what we call sliding tandem trailers. Now, this means that a trailer and the back wheels under this, the bogey, were not in a fixed position. They could be moved from one location to another, depending upon the weight the vehicle was carrying. They operated single-axle tractors for the most part, and this ability to slide that back set of wheels did allow you to distribute your weight on your vehicle so that it was in conformance with the various state laws.

Now, in moving into the T.I.M.E. Freight organization, this type of vehicle is not used in the operation into the **[485]** West Coast. We use what we call a West Coast tandem, which means simply that the back wheels of the vehicle are fixed in

the rear-most position, and maintained there and most of your road power is what we call tandem axle tractors, which is a three-axle vehicle. So there is a change here in the terms of the way you can load a vehicle. These are type of equipment that are involved.

Q. Did that require some retraining of drivers? A. Oh, yes. Not only drivers. There is a—definitely a difference in a road driver or a city man will notice the difference even more so, and the movement of the vehicle, movement of the vehicle where your wheels are at the rear of your vehicle. There's quite a difference in maneuvering it around the city. for example, than there is a sliding tandem, so to speak.

Q. Did you run into morale problems with this particular purchase that you had to face? A. Morale was a big factor here and it always is in a company. We are really in the people business. About sixty percent of our expense goes to employee pay checks. People make up a big part of our total activity. Here we have a situation, as existed to some extent in others, we had people that for ten or fifteen or twenty years had been completely devoted and dedicated to an individual, let's say, which is what it was, a man who did own and operate the company, and **[486]** suddenly Uncle Bob, as he was called, was no longer there. People felt that they had lost their right arm. Acceptance of a new organization, new policies, new procedures, was very degrading to some of these people, who had these fears and intense loyalties that they had built up for a good long while to an individual, and the company which he represented.

Q. And in conjunction with that, did you have any requirement to merge seniority lists at that location? A. Oh, yes. This is standard procedure at these joint terminals where you have two groups of individuals being merged. In most cases, most locations, it's not true everywhere, but in most locations, in an acquisition of this type the two groups of

employees are put together in what is referred to as a dove-tail fashion. In other words, it's just as though the company, the individuals had been working for one company all along, and their seniority lists are merged, just strictly as though it had been one organization.

Now, this means that a man that might have been in tenth place from the top on a seniority list in one company suddenly finds himself in twentieth position simply because an employee with the other group had been there longer than he had been with his company, so there is always this difficulty in terms of merging, but it always is done, and then inevitably when you have this type of thing, there are some people on the bottom of the list who are not utilized simply because when you put two **[487]** operations together your needs for people and equipment and everything else is just lessened.

Q. Are there some mergers that involve putting seniority lists together in some fashion other than a dove-tail fashion? A. Well, it depends on the type of acquisition, but I believe in the Central States Area, at least in Chicago, there is a situation where the employees of the acquired company go to the bottom of the list rather than being dove-tailed.

Q. Is that sometimes referred to as an end-to-end combination of the seniority lists? A. I have heard it referred to as that, yes.

Q. Did you have any financial problems in conjunction with that merger that required immediate attention? A. Yes. As I mentioned, the company was in extremely bad financial condition, and the type of traffic which they were handling was really the main source of their difficulty. In other words, when I say type of traffic, it involves many things. It involves where the traffic is destined and the nature of it, traffic freight carriers, different rates, different types. The Super organization had again kind of developed into more of a truckload carrier than they had LTL. This type of thing had to be corrected very rapidly in order to put the company into a profitable position, and then there were many reductions in people really in terms of the Super Service acquisition.

Q. Can you tell us, to bring us up to date at this point, **[488]** about how many terminals and how many employees you had in the system. A. At this point, after the Super purchase, there were fourteen hundred employees in the company, and then we were operating twenty-eight terminals in fifteen different states. That was the size of the organization at this time.

Q. What was your next merger? A. Next we secured a small, a much smaller operation on the West Coast, which was Constructors Transport. This was acquired under a temporary authority. It was relatively small in terms of people or vehicles, or anything of that nature, and it extended the operation simply from Los Angeles to Sacramento and San Francisco, as you see there. There were not too many problems in connection with this other than the consolidation of the terminal at Los Angeles, where we had again the merging of people and this type of thing.

Q. All right. What was next? A. The next one was in 1968 where the company acquired again a small operation, a portion of an operation. This company was divided between another carrier and ours. In other words, they had some authority and we purchased part of it, and the other carrier purchased the other portion of it, but we secured the authority that ran from Oklahoma City down to Dallas and San Antonio. This was the Texas-Arizona Motor Freight Company.

[489] Q. Was that a true merger, or was that primarily just the purchase of the operating authority? A. It was the purchase of the operating authority. The company had deteriorated to the point that they had practically nothing left but a few

road drivers and a few scattered vehicles, and it really was just a purchase of operating authority is what it boiled down to.

Q. And it appears the two primary points you acquired there were the right to serve Dallas and San Antonio, Texas. A. That's right. Fort Worth is included in that Dallas area. Those are the major points.

Q. All right. What was the next merger, please? A. The next one is the one that formed our current company, which was in 1969, January of 1969, which as I mentioned, we put together—well, this is just a portion of it here. This is it showing the LASME operation itself, which is the Los Angeles-Seattle.

The next chart will show the other organization, which is the DC International. These three companies were merged into one in January of 1969. The red lines you see on this particular chart represent the operating authority of the former DC International Company in which itself had been made up of some eight organizations since 1940, acquisitions that fell into—well, one in 1940, 1942, and two in 1942, one in 1945 and one in 1956, one in 1961, one in 1963 and in 1964. There **[490]** was one other operation which was a part of DC at one time, which was disposed of prior to the merger with T.I.M.E. and Los Angeles-Seattle.

This merger gave us quite extensive operating authority, as you can see. It resulted in duplicate terminal facilities in eight major cities, plus the city of Los Angeles, we had three terminals. In other words, we had the problem here of merging. We have today merged one of those into another one, but we are still operating two terminals in the Los Angeles area. We are also operating two terminals in the New York City area.

Q. What are the factors that lead to the maintaining of two terminals? A. The geographical area that you are attempting to serve has a lot to do with this. In other words, when you get

into a city that covers such a vast area and so many customers, as does Los Angeles, or New York City, many times we feel it is advantageous to maintain two separate operations where it can be done. Now, it's a little difficult in a city like Chicago, for example, to do so, because you don't have the distinction between locality as much in Chicago as you do in New York. There are two terminals in New York. We say in New York, they both happen to be in New Jersey. We refer to it as New Jersey, which serves a portion of New Jersey south of Newark, and also covers Brooklyn, Staten Island and Long Island as far as New **[491]** York City is concerned. Then we have another location in North Bergen, New Jersey, who basically services Manhattan and Manchester County and Northern New Jersey. Where we can separate an area geographically in that manner, we prefer to have individual terminals.

Q. Did these mergers result in your operating in all of the major labor conferences throughout the country? A. Yes. For the first time it gave T.I.M.E. Freight operations into all the major conference areas of the International Teamsters organization.

Q. What were the largest problems you faced with adding this much territory? A. Well, the first problem that we faced and that had to be resolved immediately was how do you operate three companies as one company in terms of movement of freight; in other words, under our contractual relationships, a man who is performing a certain function is entitled to follow that work. Now, I'm speaking basically of road drivers at this point. In other words, if a driver has been operating between two points and pulling your traffic between those two points, if you should happen to want to redomicile that man or relocate him or move the traffic to some other method of operation, then the man who has been performing that work is entitled to continue to do so. This was our major problem in terms of this operation, was reaching an agreement that would enable us to

operate the **[492]** system and still maintain certain relationships of this type.

Boston is a good example. The company, prior to the merger, had two terminals in Boston. They had two pickup and delivery operations. Both of them, for example, would pick up freight destined for Los Angeles, California. They had been doing this. And then you had a group of road drivers, two groups of road drivers, one of them based in Chicago, for example, that had been accustomed to pulling all of the freight out of Boston to Los Angeles. This is the way that they had been routed. You had the other group of drivers domiciled in Winchester, Virginia, who also had been accustomed to pulling all of the traffic out of Boston to Los Angeles. Where do you draw the line? In other words, whose work is this tomorrow morning when you only have one terminal? These were resolved to a certain degree. We still feel that we have some inefficiencies in our total operation that are a result of this type of activity, or this type of situation, not activity. We gradually have been able to resolve some of them, but this is the type of difficulty that we were first confronted with in terms of operating.

Now, the Boston example existed in many other locations, Chicago, Seattle, Portland, Los Angeles. Various groups of road drivers, who in the past had been accustomed to handling all of the traffic moving in one direction, and now we had two groups that were theoretically entitled to the same thing, so **[493]** what we worked out was a priority road situation where, and this was done on a nationwide basis with the Teamsters, so that we could operate this company as one company.

Q. Did this merger, in fact, result in changes in all phases of your operation? A. Oh, yes, very drastic changes, and we are still changing as a result of it. In other words, our first concern, of course, was to bring it together in the most efficient manner that we could. Mergers always, particularly when you get into this area, this was a true merger, this was not an acquisition, but there are always, seems to be a tendency in mergers to—well, the first thing you usually do is lose business, you lose employees, you lose business. It's just due to the nature of the situation, where you were previously handling traffic that is no longer available to you, or becomes available in a little different fashion, and you wind up losing some of this freight, which has a tendency to reduce your earning capability, and hold your company down. We have experienced this very definitely since this merger.

Q. Do you have any figures to give some comparison of the earning picture before and after the merger? A. Well, in 1971, for example, which is just the past year, in the third year of our merger is the first year where our total revenue income had exceeded what the joint companies had experienced prior to the merger. In other words, we have been **[494]** going downhill in terms of total business up until last year. This year we did show more revenues than the combination of the three had shown any year before. But in terms of the earning capabilities of the three years just prior to the merger of the companies, if we had combined earnings, they earned about four million dollars per year of net earnings. Since the merger we had one year in which we had a loss, which was 1970, and the average for the three years has only been a million and a half of profit. Now, a million and a half dollars sounds like a lot of money perhaps, but in comparison to our combination and comparison with what we know the system is capable of producing, we are a long way from where we need to be in terms of total business and earnings when actually our earnings for the past three years have been perhaps a little less than a third of what competitive carriers have produced.

Q. Does the lower amount of earnings have any effect upon your ability to maintain a staff of employees and purchase equipment and your general operational capabilities? A. Well, this, of course, yes, has a bearing on it. In other words, what you are doing, you are fighting two things, you're fighting a need for

a profit to satisfy your stockholders, and you are fighting for a need to expand your organization to attract additional revenues. We have not had any expansion of this type since the merger. We have not had the ability really to press out in some areas where some of our competition has **[495]** done so simply because of the situation. Now, it also affects your—your total volume of your business that you are doing, and the profit you're making on this has a bearing on the way you structure your organization in terms of people. In other words, how extensively you are able to pursue some of the more sophisticated management techniques in the situation.

Now, another tremendous thing that has taken place, and we just got this the first of April of this year, and we now feel that we have a control system for the first time that is adequate to meet the needs of our organization, and on April 1st we went into a complete system-wide on-line or real-time computer system to handle all of our preparation of freight bills and controls and dispatching and equipment locations. Up until this time we have not felt that we had an adequate system to really control our company.

Q. Approximately how many terminals do you have now and how much volume of freight do you handle? A. We are operating fifty terminals today in twenty-four states. Our year-end report at the end of 1971 showed five thousand nine hundred thirty-five employees. We are operating sixty-four hundred pieces of automotive equipment. We are handling from ten to twelve thousand shipments per day; this is the size of our operation today.

Q. In addition to your terminal staff, do you have regional officers to supervise the various regions? **[496]** A. Yes. As far as control of this organization and the administration of policies and direction, we have three geographic regions which we refer to as the Western Region, the Northern Region and the Southern Region, located in Los Angeles and Chicago and Memphis.

We have a regional office which is headed up by a regional director, the man that is in charge of all the activity within the geographical area which encompasses, oh, I believe, from eighteen to twelve terminals. I'm not sure of the exact number at each region at the moment. He has to assist him in this work of directing the regional activity a regional sales director. He has a regional traffic manager and he has a regional labor supervisor. In other words, he has a staff composed of three people that work with him in directing our activities in the geographic location from which he is responsible.

Q. And are policies and procedures worked out from the officer level through the regions and the terminals? A. This is basically the way we operate. This is the line organization, so to speak. Our regional director is the man to whom all of our terminal managers report. He, in turn, reports to our executive vice president. Although we work basically through our regional offices, there also are occasions and situations where our officers work directly with the managers, but always within the confines of the regional concept.

Q. With all the various operating problems that you have **[497]** indicated that grow from these mergers, has your company been taking steps to also recognize its obligations in the field of hiring and promoting minority employees? A. We feel that we have very definitely, and our record will so indicate. We, as a company, are very much aware of our obligation, not only in the recruitment, but also the advancement of minority employees. We feel that our record will indicate this. Some of the other witness will perhaps have more to say about this, but we feel that we have demonstrated, despite the many demands on the time and skills of our management during this merger, that we still have indicated our desire and attempt and willingness to rectify or correct our posture that existed perhaps in the past years. We feel that we are showing this very definitely and our record will so indicate.

Mr. Schuler: Thank you, Mr. Wilkins. I have no further questions.

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[514] **Redirect Examination**

By Mr. Schuler

Q. I have just one question on redirect.

You were asked some question by Mr. Fenton about retraining of employees at the time of the mergers. Did this retraining consist of completely giving new skills to people or merely adapting their skills to the new jobs? A. Most of the case, it was adapting their skills or retraining in terms of their past knowledge and relationships. [515] In other words, take a truckdriver for example, he has been accustomed to driving one type of unit, you take that basic driving skill and apply it to a new piece of equipment. It is not a complete change in the skill as such.

Mr. Schuler: Thank you very much. No further questions.

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[519] **GEORGE JAMES HENRY, JR.,**

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Hunter

Q. Mr. Henry, did you previously testify in this proceeding on Thursday, May 4th, 1972, as a witness for the plaintiff? A. Yes, sir, I did.

Q. For the purpose of reviewing your general background——

Mr. Herman: I'm sorry, I can't hear you. Would you speak up?

Q. (By Mr. Hunter) For the purpose of reviewing your [520] background, will you briefly review your employment history with T.I.M.E.-DC? A. (By the witness) My employment with T.I.ME.-DC commenced in July, 1969, at which time I was employed as a labor relations supervisor. In April, 1970 I was designated as the manager of labor relations. In September, 1971 I was promoted to director of labor relations and personnel. That is the position that I now hold.

Q. I see. Have all of these positions accordingly dealt with the administration of labor agreements with T.I.M.E.-DC? A. Yes, sir, they have.

Q. How many years have you been employed in the trucking industry? A. Twenty-nine years, sir, with the exception of one time out for military service.

Q. All right. I see. Who was your immediate employer prior to T.I.M.E.-DC? A. I was employed by a common motor carrier known as United Buckingham Freight Lines, Inc.

Q. During the course of your employment with United Buckingham, did you hold any positions with respect to labor relations functions? A. Particularly that period of employment from 1963 to 1969, '69 being the time that I left their employ.

Q. What did those positions include? [521] A. In 1963 I was located in Omaha, Nebraska, and at that time I was identified as the manager of the eastern operations, eastern operations in that company encompassing Denver and Casper, Wyoming on the extreme west, Detroit, Michigan on the extreme east, St. Louis and Kansas City on the south, Minneapolis and Sioux Falls on the north and within those boundaries we had several points of certification.

Q. I see. What other positions did you hold with that company? A. Subsequently I was promoted to vice president, eastern

operations, the boundaries remaining the same. And then in 1967 I became vice president of industrial relations for that company.

Q. What geographical area did that duty encompass? A. Coincidently, in 1967 Buckingham Freight Lines, through application to the Interstate Commerce Commission, acquired permission to operate initially in a temporary authority, and subsequently on a permanent authority, the Norwauk (phonetic) Truck Lines, Inc., so this then extended United Buckingham authority eastward to the East Coast. This essentially was the addition. The operation now through the acquisition covered some thirty states.

Q. What was the nature of your duties as vice president of industrial relations? A. I was responsible for the safety, labor and personnel **[522]** functions of the company.

Q. Does that include the policing and the administration of labor agreements with the various local unions? A. Yes, sir.

Q. I see. Mr. Henry, I submit you now an exhibit which was previously identified as JJJ, Defendant's Exhibit JJJ. Could you briefly indicate what that exhibit represents? A. This is indicative of the persons responsible for labor and personnel matters for the period of 1965 through 1970, setting out, attempting to set out the persons, responsible of the three premerged companies, namely, T.I.M.E. Freight, DC International and LASME.

I would like to apologize for one thing. In the area on the first page under the heading of DC International, there is an inadvertent error indicating that Mr. Catsinas' employment was terminated in 1966. We apologize for that. It was 1967.

Q. Let the record indicate then that correction.

Mr. Henry, at the time of your prior testimony you identified an organization called Trucking Employers, Inc., is that correct? A. Yes, sir.

Q. Is that organization commonly referred to as TEI? A. Yes, sir.

Q. Is T.I.M.E.-DC affiliated with that organization? **[523]** A. Yes, sir, it is.

Q. Were its three immediate predecessors, which have been identified as DC International, LASME and T.I.M.E. Freight, also affiliated with that organization? A. Yes, sir.

Q. When was it formed? A. Trucking Employers, Inc. was formed in late 1963.

Q. I see. What is the nature of that organization? A. Well, initially, it is a non-profit organization in principle. It is a multi-employer association of some seventeen hundred trucking companies through authorization from these trucking companies' respective state or area organizations, as they are sometimes called, through authorization represent and negotiate and execute in behalf of the carriers a labor agreement with the Teamsters union. The labor agreement is known as the National Master Freight Agreement, and it includes its various supplements. I see. Do you have personal knowledge as a result of your labor relations activities for the factual reasons for its formation?

Are you referring to TEI?

Q. Yes. A. Well, yes, sir. The occasion for its formation was for the first time an attempt to negotiate an industry-wide labor agreement with the Teamsters union for the trucking industry.

[524] Q. In what manner were negotiations conducted in the trucking industry prior to the formation of TEI? A. Well, for a period of about fifteen years prior to the formation of TEI, there were agreements known as area agreements. These were areas, being geographical. There were carriers, for that matter, unions operating in a given geography whose problems or negotiating reasons were common, and this was the occasion for

the area agreements. And this existed, as I say, for some fifteen years prior to the construction of TEI.

Q. Do you have personal knowledge for the reason then, therefore, for the formation of TEI in the context? A. Well, yes. Principally, what happened is that our industry had known phenomenal growth, particularly in the post-war years. Prior to that time, by the certificates held and by the relatively smallness of the companies, they were confined to, as I stated, geographical areas. Because of the growth through mergers, acquisitions, through grants of authority by the Interstate Commerce Commission, a significant number of carriers had expanded their operations, finding themselves operating in more than one area, conceivably several areas, and so, therefore, there was the occasion then for standardizing, if you will, and giving credance then to an industry-wide negotiation.

Q. I see. Could you describe the organizational structure of TEI? **[525]** A. Yes, sir. TEI is made up essentially—it starts off basically with two committees, one known as the executive policy committee, and the other one known as the labor advisory committee.

Now, these committees are arrived at on a per capita basis, if you will. For each four thousand bargaining unit employees, one member from each of the associations, of which there are two, incidentally, is appointed to the executive policy committee, and using the same formula, one member is appointed to the labor advisory committee. The basic distinction between the two committees is that whenever possible the executive policy committee is made up of the principal officers of motor carriers, and it is the voting unit. The labor advisory committee, as the name implies, it advises, it does not hold a vote, is made up of gentlemen that are principally involved in the day-to-day labor relations matters of motor carriers.

Q. I see. A. From that a board of directors—from the executive policy committee, if you will, a board of directors is established. The members come from the executive policy committee. They are voted on by the executive policy committee. There is about three basic breakdowns, as far as the board of directors is concerned, so that all of the areas, and we in our industry from the employers' side, we use the same conference **[526]** designations as does the Teamsters, referring again to the Western, Southern, Eastern and Central, so that each of these conference areas will be represented. Again, a per capita formula is used. For each twenty thousand bargaining unit persons, there shall be one board of directors from that respective conference. This represents nineteen, this accounts for nineteen of the board of directors. Four of the board of directors are the officers of TEI such officers being a president, a chairman, a vice chairman and a secretary-treasurer. This leaves five not accounted for. Those five—Excuse me. It accounts for four of them. Four gentlemen are known as the negotiating committee, again so that representation is equal. There is one negotiating member for each of the four conference areas. The fifth person is known as the negotiating chairman.

This, I believe, accounts for the twenty-eight that I set out.

Q. What is the nature of the negotiating committee as selected by the TEI executive policy? A. Well, as I indicated, these gentlemen are representative of the four conferences. They form the basic negotiating team, if you will, to negotiate with the Teamsters.

Now, logically, because there are so many supplements involved and so many locals identified with the respective supplements, the bylaws provide the appointment of subcommittees so that in these particular areas of negotiation it can move **[527]** along.

I might digress. The negotiating committeemen are by reputation informed, good negotiators. However, they are not empowered to, in fact, conclude an agreement with the Teamsters, but rather are required to bring back their recommendation,

their findings, or what have you. They are required to bring those back to the executive policy committee, and before the matter becomes official it must carry the majority vote of the executive policy committee.

Q. I see. Well, now, having described the organizational structure of TEI, could you define more closely T.I.M.E.-DC's affiliation with TEI. A. Well, we extend our power of attorney to TEI through our local association.

Q. What is that? A. That is the Southwestern Operators Association. It's located in Dallas, Texas.

Q. How is that designated, your T.I.M.E.-DC's association? A. Well, Southwestern Operators itself is a TEI affiliated organization, and we extend to them our power of attorney in these matters, and incidentally, as we extend it to them in the matter of these—the National Agreement, we also indicate the supplements that we are particularly involved in.

Q. I see. Now, although you submit your authorization to represent through the Southwest Operators Association, is **[528]** T.I.M.E.-DC also a member or affiliated with the other area organizations? A. Well, yes, sir. Because of the expansion of our company, we are members of twenty other such associations. The total number is twenty-eight, and we happen to be members of twenty of those twenty-eight.

Q. I see. Now, did the same form of affiliation hold true for DC International, T.I.M.E. Freight and LASME? A. Yes, sir.

Q. Could you describe the method by which TEI negotiates the various agreements on your behalf? A. Well, first of all, they obtain our authorization through our association, and as the negotiations—perhaps I'm sounding repetitive—as the negotiations commence, why, it is through this negotiating committee, and out of necessity through the appointment of subcommittees.

Q. Who do they negotiate with? A. Well, they negotiate with the Teamsters union, who in itself appoints a committee. I believe that it is known, their committee is known as the National Over-The-Road and City Cartage Policy Negotiating Committee. I believe that is its designation.

Q. And then, as the negotiations are commenced, what occurs? A. Well, the intent, of course, is to conclude the National Master portion of the agreement. However, before the **[529]** supplements are concluded, there are frequently some contingencies with those supplemental agreements who are subsequently resolved, again through one of our employer associations. So the process is not immediate. It involves getting down to the local level into the supplements, again through our local associations that we have given our power of attorney to.

Q. Are the results of TEI negotiations submitted to the executive policy committee; is that correct? A. Yes, sir.

Q. Upon acceptance by the TEI Executive Policy Committee, does T.I.M.E.-DC at that time become signatory to the various agreements? A. No, sir, it doesn't.

Q. What must occur prior to the actual signing of the agreement? A. Well as I indicated previously, there is still some contingencies at the local level, based on historic practices and what have you, that the unions on one hand attempt to guard jealously, and on the other hand, out of necessity, the employer attempts to negotiate out, and this is done through—again through these local associations in our behalf.

Q. Could you identify some of these local matters? A. Well, in the Central States Over-The-Road Agreement, for example, you have the Ohio Ryder.

[530] Q. What geographical area does that cover? A. Well, as the name applies, it covers Ohio. Ohio happens to be one of the states found within the Central States area.

Q. Who negotiates that on your behalf? A. Our Ohio association.

The Court: Who do they negotiate with?

A. (By the witness) With the unions involved, sir.

The Court: Local unions or international?

A. (By the witness) No, the local unions.

Q. (By Mr. Hunter) Okay. With whom does T.I.M.E.-DC in effect then sign its various agreements with? A. (By the witness) Well, ultimately with the local unions.

Q. This is at the conclusion of all of the various local negotiations. A. Yes, sir.

Q. I see. Is T.I.M.E.-DC in fact signatory to any agreement with the International Brotherhood of Teamsters? A. No, sir.

Q. I see. How many labor agreements is T.I.M.E.-DC presently signatory to? A. Oh, we are signatory to a total of a hundred and forty labor agreements. Now, of that hundred and forty there is a hundred and twenty-four of those that are with Teamster affiliated unions. Within that framework of a hundred and **[531]** twenty-four, there are a hundred and twelve of those that are supplemental to the National Master Agreement, meaning that there are twelve that aren't.

Q. How are those agreements negotiated? A. Well, those are negotiated sometimes between ourself and the local union, but generally on our behalf through a local association.

Q. I see. Now, Mr. Henry——

The Court: Are you going into another area, now?

Mr. Hunter: Yes, sir.

The Court: Let's take the lunch break at this time, then.

I'm trying to think, Mr. Wells, about your witnesses. I looked at this list of witnesses from T.I.M.E. Do you really think

we ought to have Mr. Wells have his witnesses before Friday morning in view of the fact that I indicated that about 2:45 I've got this time tied down tomorrow afternoon, and I will need to leave. I could come back at 4:00 and if it will expedite things, I will.

Mr. Wells: If Your Honor please, I have one coming in on the basis of a long-distance call last night that I might want to put on out of order.

Mr. Hunter: Your Honor, also that list which I believe you are referring to in the pre-trial order **[532]** would not represent the total number of witnesses. We are calling all of those purely for rebuttal. There are not as many as I listed on that document.

The Court: Well, I indicated to you all yesterday, I will still stay if you will give me from 2:30 until four or 4:15 tomorrow afternoon, then I will come back then and we can hear your witnesses out of order. There's no problem.

Mr. Schuler: No, no problem.

(Afternoon Session)

The Court: Mr. Hunter, if you will continue your examination.

Mr. Hunter: Thank you, Your Honor.

Direct Examination (Resumed)

By Mr. Hunter

Q. Mr. Henry, near the conclusion of your testimony, you advised us as to the number of contracts that T.I.M.E.-DC has with labor organizations. I believe your testimony indicated that those with which you had contracts were the Teamster local unions. A. Yes, sir.

Q. Does T.I.M.E.-DC have other labor agreements? **[533]** A. Yes, sir, we do.

Q. Would you describe briefly the nature of those agreements? A. We have eleven IAM agreements; that is, International Association of Machinists and Aerospace Workers. Six of those eleven, incidentally, are found in an area agreement. We have one agreement with Building Service Employees in Chicago and one agreement with the Office and Professional Workers in Denver, Colorado, and one agreement with the Inter-Terminal Workers in New Jersey.

Q. Mr. Henry, previously identified as Defendants' Exhibit SS, is a document entitled The Variances Between Various Labor Agreements to which T.I.M.E.-DC is Signatory. Are you familiar with that document? A. Yes.

Q. In what manner are you familiar with that document? A. Familiar to the extent that it was prepared under my direction.

Q. What does that document purport to represent? A. It represents the variances between the various labor agreements, calling attention for one, the retirement differences between Central States, Western States and Southern Conference, the road seniority provisions of those agreement.

The Court: What is the number of that exhibit, please?

[534] A. (By the witness) Sir, it is SS.

The Court: I don't have that up here, do I?

A. (By the witness) Double S.

The Court: Have you got a copy of that I can use to examine?

Mr. Schuler: Yes.

The Court: I'd like to follow it if we are going to start talking about it. It will be easier for me to understand it. All right. Thank you. That will be helpful.

All right. Go ahead.

A. (By the witness) In the area of road seniority, it points out differences, probably highlighted would be the noting that the Southern Conference has the modified seniority provisions.

Q. (By Mr. Hunter) That modified seniority provision is exclusively found in the Southern Conference area supplement? A. (By the witness) Yes, sir.

Q. Is that found in any other supplemental agreement to which T.I.M.E.-DC is signatory? A. No, sir.

Q. I see. A. No, sir, does not. It points out another thing that—it points out several things, but a thing of significance, I think, is a substantial variance, I think, in the seniority **[535]** provisions, particularly as it applies to the probationary period. In other words, it sets out the differences in time and circumstances under which a gentleman eventually acquires seniority status, and that would be the highlights of it.

Oh, it sets out, too, again in the area of seniority, a comparison between National Master Freight Agreement, which would be applicable to all contract supplements. It compares that on one hand and compares the difference on the other hand with the Local 705 Chicago Agreement, that difference being the basic difference between 705 and the National Master, which is particularly in the area of a buy-out as one carrier would buy another. Those employees of the purchased company, come over at the bottom. They do not come over on a dovetail basis.

Q. I see. Does this exhibit purport to represent all of the variations that exist in the various area supplements? A. No, sir, it doesn't.

Q. Can you identify any variations which would not be set forth in that document? A. Well, one significant item that was inadvertently left out was the occasion that variances exist with Joint Council 7.

Q. Where is Joint Council 7? A. That is in the bay area, the San Francisco Bay area, the union that we have a contract

with there. That is part of Joint Council 7, covering our employees at Hayward. Unlike all the other contracts, it has an exclusive hiring hall provision **[536]** which has the effect of requiring the employer getting all of its employees from the union hiring hall.

Q. I see. This is a condition not found in any of the other supplements, is that correct? A. That's correct.

Q. Well, in particular regard to seniority provisions, where does T.I.M.E.-DC find the various seniority provisions applicable to its various terminal locations? A. Well, initially there is a seniority provision in the National Master Agreement, then as you get into the supplemental agreements therein, you will find seniority provisions in the contracts.

Q. Are there local practices also with regard to seniority? A. Yes, sir, there are.

Q. Are they in any manner unique to the particular location where T.I.M.E.-DC has a facility? A. Yes.

Q. In what manner of the seniority provisions that have been developed that apply to the T.I.M.E.-DC locations? A. Well, the seniority provisions in the contract evolve basically from two sets of circumstances. One, the negotiations of the agreement itself, and those things generally evolve in the course of the contract from a grievance, items that are grieved through the grievance machinery provided for in the contract. I'm trying to determine in my own mind what comes **[537]** first as you are in a period of a contract. Maybe I could best say it this way: As you are in a period of a contract, certain items become matters of interpretation, matters of controversy, and are submitted to grievance machinery. They are ruled upon, and may subsequently appear in a down-the-road negotiation of a contract so that they won't have the continuing problem with it.

Q. Again, you earlier illustrated the manner in which contracts are negotiated on behalf of T.I.M.E.-DC. Does this form

of negotiation, that is, multi-employer, multi-union basis, also explain the manner in which seniority provisions are developed? A. Oh, yes.

Q. For example, therefore, in Los Angeles, are the seniority provisions which generally apply to T.I.M.E.-DC's Los Angeles facilities also applicable to other carriers in that same city? A. Oh, most certainly.

Q. Is that the case generally in the context of the various other locations? A. Yes, sir.

Q. In what manner could T.I.M.E.-DC, therefore, modify existing seniority provisions? A. Well, the only way, in my opinion, to my knowledge that T.I.M.E.-DC could modify those provisions conceivably would be **[538]** to withdraw from the contract and, of course, there is a legal question there, you couldn't withdraw during the term of the contract, but as the contract expired and you subsequently got into new negotiations, is to not be a part of a multi-employer negotiation, and elect to negotiate singularly, by yourself, with the respective local unions.

Q. I see. This, therefore, would require T.I.M.E.-DC to leave the various multi-employer associations with which it is associated. A. Yes, sir.

Q. And assume the responsibility of negotiating its own contracts with the various local unions, is that correct? A. That's right. However, if I may, that could be a disastrous situation for many reasons, the basic reason being time alone. I have indicated that we have contracts with a hundred and sixteen IBT locals, a hundred and twelve of which are supplemental to the National Master. Time alone would preclude you from doing this. I seriously doubt that any local union, while they may consider negotiating with you singularly, would change their position on seniority matters. You would lose the strength of collective multi-employer bargaining. You would not know

what your costs of doing business would be, something that an industry-wide negotiations permits you.

Q. I see.

Mr. Hunter: I believe that's all the **[539]** questions I have.

The Court: Let's see, can we go to the government?

Cross-Examination

By Mr. Fenton

Q. Mr. Henry, I believe you testified that Trucking Employers, Inc. was originally founded in late 1963, is that correct? A. Yes, sir, that is what I said.

Q. When was the first National Freight Agreement entered into? A. Well, it was negotiated and resolved in 1964, early 1964. I believe it was February.

Q. You also described the negotiation process which occurs between Trucking Employers, Inc. and the Teamsters. A. Yes, sir.

Q. And you mentioned that a board of directors forms a basic negotiating committee which they negotiate with the Teamsters, and then there are also subcommittees composed of, I suppose, various segments of this basic negotiating committee, is that correct? A. That isn't exactly what I said, Mr. Fenton.

Q. Could you reiterate how the subcommittees are set up? A. I did not say that the board of directors formed the **[540]** negotiating committee. I said a negotiating committee was formed from the executive policy committee. Those committee members could, incidentally, be members of the board of directors.

Q. I see. And you stated, did you not, that there are also subcommittees. A. Yes, sir.

Q. Now, do these subcommittees negotiate the various conference supplemental agreements? A. Yes, sir.

Q. And that would be the Southern Conference Supplemental Agreement, Western Conference, Central Supplement and Eastern Supplemental. A. Yes, sir. There are many more.

Q. Yes. Carolina, I think, is another. A. New York, New Jersey, New England.

Q. Right. A. I think there are thirty-six to be exact.

Q. Do these negotiating sessions generally occur at the same place or same area? A. Yes, sir.

Q. At the same time, in fact? A. Yes, sir.

Q. Are there also union subcommittees which participate in the negotiations of these supplements? **[541]** A. Presumably, yes.

Q. Do you know? A. Well, yes, there are—I have personal knowledge that there are opposing union subcommittees.

Q. Do you know who appoints the subcommittees for the unions? A. No, sir, I don't.

Q. Now, you testified with respect to Defendant's Exhibit SS. Would you agree that there are competitive rights which are provided for in these agreements, which are separate from benefit rights; in other words, a competitive right would be the seniority which is given to an employee, whereas a benefit right would be something like a vacation length, or retirement? Do you understand what I'm driving at? A. No, sir.

Q. Will you agree that a man's seniority position gives him competitive status? A. Oh, yes, sir.

Q. Does the length of a man's vacation, does that in any way put him in competition with any other employee? A. I don't understand the question, Mr. Fenton.

Q. Well, you testified, I believe, with respect to Defendants' Exhibit SS, that there are vacation provisions set out in these various agreements. A. Yes, sir.

[542] Q. And some of the agreements have different provisions for vacations. A. Right.

Q. Now, when a man is given a particular vacation, is he competing with any other employee at the company? A. No. Well, in the context of competing, as a matter of local practice, if this is in the context of competing, in the matter of local practice, the contracts generally set out that the employer will let a certain amount of its employees go on vacation between May and October, and it calls, generally calls that the people, the workers, consistent with their seniority, bid, indicating a preference as to the time they want to go, and seniority in that circumstance is the governing factor.

Does that answer your question?

Q. That is——

The Court: Well, it's not competitive as to who will get a run on a certain day necessarily.

A. (By the witness) Well——

The Court: They are bidding for the jobs. The length of the vacation, would that have an effect on it?

A. (By the witness) No, the length of the vacation is provided for in the contract.

Q. (By Mr. Fenton) And the length of the vacation is not a competitive thing. A. (By the witness) No, sir.

[543] Q. What about when a man retires, is this a competitive thing, whether he retires at age sixty-two or age sixty-five? A. No. It's provided for.

Q. It is provided for, but it is a competitive thing. A. Well, it can become competitive.

Q. How would that be? A. There is a requirement under a certain set of circumstances, depending on the supplements involved, that a man, if he has sixty-five years, for example, if he has sixty-five years and he does have the sufficient credits to retire, credits into the appropriate trust fund, that he must retire. If he does not retire, it creates—it is holding somebody way down at the bottom of the list from work. I mean, it can create a competitive situation that way.

Q. Agreed, but if the contract provides that everyone must retire when they reach age sixty-five, then there is no competition among employees. A. No, I'd say not.

Q. On that aspect, is there? A. No, I'd say not.

Q. Now, you further testified with respect to possible means by which T.I.M.E.-DC could modify seniority provisions. I believe you testified that perhaps the only way this could be done would be to withdraw from present contracts and present associations. Was that the thrust of your testimony on that? **[544]** A. That's what I said.

Q. Now, that would leave you to deal with the local unions, correct? A. Yes, sir.

Q. Now, in your opinion, based on your experience, would you be able to negotiate these seniority modifications with a local union?

Let me give you an example. Let's assume that you wanted to permit city drivers in Dallas, Texas to be able to transfer to road driver vacancies, which might come up there, and take all or part of their accumulated terminal seniority with them. Do you think you could negotiate this with a local union?

Mr. Wells: Object to this as speculative.

The Court: Well, I'm going to overrule. I am interested in what he has to say about this.

A. (By the witness) Well, I'd say this, Mr. Fenton: We, the company, could submit it in the form of a proposal for their consideration. However, if that proposal was in conflict with a practice that they had through contract with all the other carriers in a like situation, I would not hold much personal hope that they would entertain it.

Q. (By Mr. Fenton) Is that proposal presently, or let me rephrase that. Is that proposal in conflict with the present practice of that local? **[545]** A. Well, what local?

Q. I believe it would be Local 745 in Dallas, would it not? A. Is your question is there a provision that permits the exchange from dock to road and so forth?

Q. Well, my original question was assuming you wanted to negotiate this kind of change, could you do it with a local union there, and then you answered that and you stated if it were in conflict with the present practice of that local union, that you wouldn't hold much hope for it.

Now, my question now to you is would that be in conflict with the present practices which prevail there? A. Of permitting a city man to go to the road or vice versa?

Q. Is there such a practice there now? A. No, sir, not to my knowledge.

The Court: I am not so sure that I—what your question is, and what the answer is. Your question was is there such a practice. You mean a practice prohibiting it, or a practice of allowing it? I want to get this answer.

Mr. Fenton: A practice of allowing it.

The Court: Allowing the free transfer between the two?

Mr. Fenton: With seniority carry-over.

The Court: Do they allow it or do they not allow it?

A. (By the witness) They do not allow it. The contract **[546]** does not provide for it.

The Court: Does the contract prohibit it?

A. (By the witness) They are separate agreements, Your Honor.

The Court: In Dallas, now.

A. (By the witness) Yes, sir.

The Court: It does prohibit it in Dallas.

A. (By the witness) By virtue of there being separate agreements. In other words, we have a road agreement and we have a city agreement.

Mr. Wells: If Your Honor please, I am sorry, I am somewhat confused. Is the witness saying that transfer is prohibited, or that seniority carry-over is prohibited? I think he was asked both questions.

A. (By the witness) Well, I was answering the condition of seniority carry-over.

The Court: Thank you. That clears it up. I wasn't sure before. That clears it up. Thank you.

Mr. Fenton: Could I have a moment, Your Honor?

The Court: Yes, sir.

Mr. Wells: If Your Honor please, in connection with that, I would call Your Honor's attention to a stipulation on Page 13 of the pre-trial order, Paragraph 15.

The Court: I don't think that Counsel **[547]** intended to get into that specific factual situation, but was using it as an example to clarify the witness' answer to a prior question.

Mr. Fenton: I think that's all the questions I have, Mr. Henry.

Cross-Examination

By Mr. Wells

Q. Mr. Henry, I'm not sure whether you were in the courtroom when this was discussed this morning about change of operations committee. Are you familiar with how those work? A. Yes, sir.

Q. Assuming a change of operation by T.I.M.E.-DC wholly within the Southern Conference, say, from Oklahoma City to Dallas, if you intended to redomicile people or to change some method of operation that would have effect upon employees, would you prepare that in writing and submit it to the unions that would be involved? A. Yes, sir, by certified mail, incidentally.

The Court: Now, what do you mean union, local or international?

Q. (By Mr. Wells) This would be the Dallas Local 745 and the 886 in Oklahoma City, is that correct? A. (By the witness) Yes, sir.

Q. And if any other local union was going to be affected **[548]** by that change, you, likewise, would notify it. A. Yes, sir.

Q. Now, after you had done that, just tell the Court what would happen. A. Well, it then becomes a case before the change committee at the meeting of the Southern Conference proceedings.

Q. Now, does the Southern Conference have regular meetings of grievance committees on a monthly or other regular basis in the conference? A. Yes, sir.

Q. At the moment do they meet in Biloxi, Mississippi on a monthly basis? A. Yes, sir, they do.

Q. And will they have, say, three to five or six hundred grievances from the local industry that may be disposed of before

panels sitting for a week or ten days or however long it takes to dispose of those grievances? A. Yes, sir. And those panels, incidentally, are made up equally of employer and union members.

Q. All of which is set out in the contract, which is in evidence here, right? A. Yes, sir.

Q. Now, at the same time that the equal numbers of employer and union people are meeting to settle pending grievances, is there put on the agenda the matter of changes of operations which **[549]** may be pending at that time? A. Yes, sir, generally.

Q. In that case it's convenient both to the industry representatives and the local union representatives who happen to be at one spot in the south to handle the grievances, to take up at that same time the change of operation that may be pending? A. That has always been my opinion, yes, sir.

Q. All right, sir. Now, assume then you have this change between Dallas and Oklahoma City, and you have notified the affected local unions, and you are all down in Biloxi, Mississippi. Now, what happens? A. Well, it comes before the change of operations committee.

Q. That is made up of equal numbers of employers and union designees, is that correct? A. Yes, sir.

Q. How are the employer representatives designated? A. Well, they are designated generally through their local association.

Q. That would be through the Southwest Operators Association. A. Yes, sir.

Q. And do you happen to know how the union people are designated there? A. No, I don't happen to know.

[550] Q. But in any event, there are equal numbers that meet there.

Now, once that change of operations committee is set up, then what happens? A. Well, the issue—the company presents its case, the unions, if they find aspects of it objectionable, objectionable within the bounds of the contract, the labor agreement, they voice those objections and the company conversely has an opportunity to rebut, or what have you, and then finally, in Executive Session, in other words, in the absence of the participating locals and in the absence of the employer, the case —the request is decided on its merits.

Q. By that change of operations committee which is made up half union and half employer. A. Yes, sir.

Q. Now, once they have decided it, what do they do? Do they write somebody a letter or do they put it on—make a notation on the agenda, or what do they do? A. Well, it becomes a matter of record in the Southern Conference. For example, all of the proceedings are transcribed, so they are a matter of permanent record, and a decision is rendered, all of the members of the respective committees, that is, the employers' side and the unions' side, sign that, such as a decision, and the parties are called back in the room and they are advised.

[551] Q. But now the people that sign it are the committee that decided it in kind of a quasi judicial function rather than the participating parties who were litigating about it, right? A. Oh, absolutely. I had hoped that I made that clear.

Q. There is no agreement, collective bargaining agreement, or other type of agreement signed between the Oklahoma City and the Dallas locals on the one hand and T.I.M.E.-DC on the other hand. No, sir.

Q. It is somewhat similar to coming before His Honor here in court and then the tribunal declares the proper disposition under the terms of the contract, is that correct? A. It is a parallel.

Q. Yes. And then that disposition by reason of the terms of the contract becomes final and binding on the local unions involved and on the employer involved. A. Yes, sir.

Q. In effect, the change of operations committee is a tribunal that is set up under the contract to determine disputes that may arise between employers and local unions about changes of operations, is that right? A. And other contractural matters.

Q. Now, in that connection, Mr. Wilkins testified this morning about the trends and the thrust in this industry from a number of small operations to a lesser number of large **[552]** operations. Were you here at that time? A. That part of it, yes, sir.

Q. Is it also true that there is a trend in this industry that equipment and roads and various other economic factors improve and require changes in the way you handle freight over the period of a contract? A. Well, yes, yes, that's right.

Q. And is that one of the reasons for this change of operations tribunal, in order so you won't be frozen into a particular mold as of the date of the beginning of a three-year contract, but you can make necessary changes in the way you operate during that contract, but consistent with it. A. Yes, sir.

Q. Just tell the Court what kind of changes there might come in terms of changes of operations. A. Well, Your Honor, one of the most recent changes that I was personally involved in, which we put into effect on January 17th of this year, was east of Chicago going from Chicago to Toledo, Cleveland, Buffalo, Syracuse, Albany, Boston and on into North Bergen. We had what was known as a sleeper operation. That is two men in a vehicle, one driving, one resting. Prior to January 17th—before, in fact, this was a multi-change, because it now—what we were proposing now involved the Central States where the Chicago drivers were based and we were proposing in our change to do away with the **[553]** sleeper cab-type operation, and in its

stead over that same network establish a series of single man relays.

Now, the way it became a multi-conference change is that we proposed, consistent with the contract, namely letting the men follow their work, we proposed to leave X number of men in Chicago, send X number to Cleveland where we were going to establish a road domicile—prior to that time we had none—send some to Detroit, Michigan, some to Buffalo and some to Albany. The minute you hit Buffalo you are now in the Eastern Conference. This makes it a multi-conference change. So, anyway, consistent with the provisions of the agreement, namely because it was a multi-conference change, we addressed ourselves to the union chairman, who is the union chairman at National Master, Frank Fitzsimmons, and employer chairman, Ray Beagle, and you address yourself to them, outlining, if you will, what you're proposing, in fact, you indicate your present operation, you indicate your proposed operation. That office assigns it to a particular conference for hearing, notifies all of the principals, and thus you have a hearing, and in this particular case this change was granted as proposed by the company.

Q. If I may intrude on the multi-conference situation, which you have just described, is the tribunal which decides whether or not it will go into effect similarly half union-half employer? A. Oh, yes.

Q. And are the employer representatives selected in the **[554]** same way as they are on the—— A. Well, the thing that makes it slightly different, Mr. Wells, is that they always observe that both conferences, in this case the Central States, be represented, and that the Eastern Conference be represented. So while you have equal numbers, within the equal numbers there are equal numbers of conference representatives.

Q. And would that be true on the union side, too? Does the Central Conference designate certain members and the Eastern Conference of the Teamsters designate other members, or do

you know? A. No. I know that from personal experience both conferences on the union side are represented.

The Court: Is that half and half or would that be—You gave a figure per four thousand.

A. (By the witness) Well, no, sir. That four thousand only related to the TEI makeup and these matters——

The Court: This is just half and half?

A. (By the witness) Yes, sir.

The Court: In the example you've been talking about?

A. (By the witness) Yes, sir.

Q. (By Mr. Wells) Mr. Henry, with the Court's remarks there, I think there may be some confusion in this record between the negotiation of collective bargaining contracts on **[555]** the one hand and the administration under collective bargaining contracts on the other.

Now, I am addressing myself at this point only to the negotiations. Is it true that these are normally negotiated on a three-year basis? A. (By the witness) Yes, sir.

Q. For example, there were area contracts in '61 to '64. Then again in '64 to '67 and so forth. A. As I recall, Mr. Wells, the less than three year was pretty well done away with back in the early or back in the mid-fifties.

Q. All right, sir. I believe you have testified that beginning in '64 there was the National Master, and the applicable supplements, depending on geography, or on industry. A. Yes, sir.

Q. Now, would it be a fair concept to view the National Master as something of an umbrella contract that covers certain matters that will be applicable to local unions and to employers nationwide? A. Yes, sir, that would be correct.

Q. I believe you said some seventeen hundred employers in what, five or six hundred locals, or something like that? A. I don't know how many locals there are, but there are substantial.

Q. All right. Now, in the negotiations of that umbrella **[556]** National Contract, I believe you said that such employer gives a power of attorney to his local employer association. A. Yes, sir.

Q. Which in turn gives the power of attorney to TEI. A. Yes, sir.

Q. And TEI then selects the negotiating committee, as you have indicated, for the employer's side of the negotiations.

Now, similarly, does each local union execute a power of attorney either to its area conference or to the National Over-The-Road and Cartage Negotiating Committee? A. It is my understanding that they do, Mr. Wells.

Q. And do the individual employers make available the power of attorney to the unions and do the unions make—the local unions make their powers of attorney available to TEI so everybody will know who is being represented? A. Well, that is the first step of the negotiations, is the exchange, or the acknowledgements, if you will, to the respective parties holding the powers of attorney.

Q. And once those powers of attorney are executed and negotiations take place, for example, have you been physically present when national negotiations have taken place? A. No, just on the one occasion that I mentioned the other day, statistical.

Q. Let's take that one occasion, for example. In '64, was it in Chicago? **[557]** A. Yes, sir.

Q. And they pretty much take over a hotel with national committee meetings at one spot in the hotel, and various subcommittees by area or by industry meeting in the same building,

and simultaneously discussing those problems? A. As I recall, there was about three facilities involved in '64.

Q. And once those negotiating committees have come to a meeting of the mind on the National Umbrella Contract, other subcommittees have come to a meeting of the minds on supplements that will apply to respective areas or respective industries, then what happens? A. Well, those negotiating groups go back to their respective principals. Now, how the unions obtain their ratification, I don't know.

Q. But at least as far as the employers are concerned, why, this comes back to T.I.M.E.-DC, or does it come directly to the employers, or to the employers associations? A. It comes back to the executive policy committee of the association.

Q. All right. Once that has been ratified by the employers and you have been advised that whatever machinery the union used has been utilized and the local unions have ratified, then what happens? A. Then, you are still left with some problem with some **[558]** local issues with the local unions, and your signature is subsequently given.

Q. As I understand you, at that point in the negotiations you have got a national umbrella, and for example you have a Southern Conference area supplement that will cover ten southern states. A. Yes, sir.

Q. But you also may have some local issues that will have to be worked out directly with a particular local before you have a contract, is that correct? A. That is what I said.

Q. All right. Then, once that is done, then does there come signature? A. Yes, sir.

Q. And how is that signature—between what entities is that signature? A. Well, it is between the local union and the employer, preceded by the employer—again, I can't speak for the union, but preceded by the employer being notified by its local association that those issues have been agreed upon, and

that signatures are in order, so the signature—the last step actually is giving the signature to the local union by the employer, by the company.

The Court: You're talking about T.I.M.E.-DC signs this instrument when all these steps——

[559] A. (By the witness) Yes, sir, yes, sir.

The Court: The local union in Dallas or Memphis, so forth, they will sign it. A. (By the witness) Yes, sir.

Q. (By Mr. Wells) And you then——

The Court: That is the umbrella agreement. A. (By the witness) No. I'm talking about the supplements.

The Court: Well, I may have missed it. Who signs the umbrella agreement? I thought that was your question, Mr. Wells.

Mr. Wells: No, I'm glad you raised that, Your Honor. The exhibits before Your Honor is Xeroxed, and not very helpful to you. If I may just refer to a booklet as it is actually printed. It is in Xerox form in the Exhibit 203(a).

Q. (By Mr. Wells) I have here in the blue cover National Master Freight Agreement in Southern Conference, Local Freight Forwarding Agreement. You are familiar with that? A. (By the witness) Yes, sir.

Q. Along the lines that you have just been testifying to. This appears to have a signature page on Page 159.

Mr. Wells: May I hand—may I approach the bench?

The Court: Yes, sir. I was looking at 159 here, but that is not the right page.

[560] Mr. Schuler: Does that mean carry the signature, if it's in Dallas, of Local 745 on the one hand and of T.I.M.E.-DC on the other?

A. (By the witness) Yes, sir.

Q. (By Mr. Wells) And similarly, if it's in Chicago—well, if it's in Chicago, it would be Central States, so it wouldn't be that. But if it was in Memphis there would be a contract like that, which is in the Court's hand, signed by Local 667 in Memphis and by T.I.M.E.-DC Corporation. A. (By the witness) Yes, sir.

The Court: Now, this booklet you have handed me is the umbrella agreement as well as the supplements.

Mr. Wells: I believe we stipulated that each of these contracts is actually put out in that form unfortunately, or well, to save paper here, what is here is the umbrella agreement and the Southern Conference supplement at first, but then they come along just with the supplements, but it is the way it is distributed, and the way it is assigned is as in your hand, now.

The Court: T.I.M.E. will sign one with every local.

A. (By the witness) Yes, sir.

The Court: I understand.

Mr. Wells: Now, if Your Honor please, if you will turn there about mid-contract, it will be around **[561]** eighty or ninety, you will see that there are printed signatures by the negotiating committees of the umbrella, at the tail end of the umbrella contract.

The Court: I'd like to see that.

A. (By the witness) It would be probably following Article 38, Your Honor.

The Court: After Article 38?

A. (By the witness) Yes, sir.

The Court: All right, sir. I've got it here. Page 102, 103. These negotiating committees sign it on behalf of the following and they name the various associations, various companies.

Mr. Wells: Well, if I may address a question to the witness in that regard.

The Court: Yes, sir.

Q. (By Mr. Wells) The Court has before him the umbrella contract, which carries signatures of negotiating committees as distinguished from employer entities or union entities.

Now, when those negotiating committees have signed that contract, does it become effective, or does it still require ratification and action at the local union level and the local terminal level before it is actually entered?

A. (By the witness) It still involves ratification.

The Court: Without reading this supplement agreement, does it incorporate in it by reference the Master **[562]** Agreement?

A. (By the witness) Yes, sir.

Mr. Wells: The first hundred pages or so are the Master Agreement. The remaining pages are the Southern Conference Supplemental.

The Court: It must kind of incorporate, though, by reference. I notice you skip from Article 39 in your umbrella agreement and start with Article 40 in your conference.

Mr. Wells: Yes, there are cross references.

The Court: So when the company signs the conference supplement, they are in effect signing the Master Agreement, is that right?

Mr. Wells: Yes, sir.

The Court: That would be the legal effect of it.

Mr. Wells: Plus, as the witness has indicated, there may be a rider of some kind that may apply to a particular locale.

The Court: All right, sir. I understand. Thank you.

Q. (By Mr. Wells) Now, Mr. Henry, up to this point I have been addressing myself to the negotiations of the contract. Now, if that contract became effective in '70 to be effective until 1973, do there come some problems of administration under that contract from time to time? **[563]** A. (By the witness) Yes, sir, sure does.

Q. And that is a big part of your job, I take it? A. That's right.

Q. You will find either some of your employees or some local unions claiming rights under those contracts. A. Yes, sir.

Q. And do the contracts then provide grievance procedures by which those claims of right can be determined? A. Yes, sir.

Q. Very briefly, will you just tell the Court how that happens. Suppose that Nat Wells comes in and claims that he has a claim, a right to some seniority in either the National Master or in the supplement, and he has a disagreement with the terminal manager about it. What happens? A. Well, in matters of seniority, in particular, these matters are submitted to grievance machinery. The grievance machinery is provided for in both the Master and the supplement for the appropriate committee's determination.

Q. If I may interrupt for a moment, I take it that the employee would first present his grievance through his local union steward there on the dock. A. Yes, sir, he does.

Q. And the steward in turn would take it up with his counterpart on the management side, probably a dock foreman or a terminal manager, somebody like that? **[564]** A. Yes, sir.

Q. If they worked it out at that level, that would be acceptable to the parties. A. Yes, sir, but those instances are quite small or quite small in number in relating to general seniority problems.

Q. Then—well, let's get away from seniority to some other grievance then. Any kind of a grievance. The general outline

that is followed is that the steward takes it up with the management on the dock, failing settlement there, and goes to a business representative of the local union on the one hand and the terminal manager on the other to try to settle. A. Yes, sir.

Q. And if they are unable to settle it, then it goes to the grievance committee made up half of union designees and half of employer designees. A. That's correct.

Q. And those are the industry-wide agendas that at least in the south are held approximately every month for the ten southern states. A. Yes, sir.

Q. Is that generally the pattern that is followed, for example, in the West Coast and in the Central Conference or the East? A. Yes, sir, generally. You would have the state level meetings and there can be occasions at the state level where the **[565]** matter continues to be in dispute by reason of deadlock, the parties cannot agree, then they submit it—the parties, meaning the grievance machinery, submits it again to another level known as the Joint Area Meeting, and generally it is resolved there. However, should it not be, it can conceivably end up at the National Conference.

Q. Now, there was some conversation this morning to the effect that in the course either of a grievance procedure or a change of operations procedure, there was some kind of a new agreement. In your experience, does there come any such agreement in the administration of a contract, or does there come just a decision of the body set up under the contract to decide it? A. You lost me, Mr. Wells. I'm sorry.

Q. I think perhaps you were not here for awhile this morning when one of the witnesses talked about this.

There was some colloquy about an agreement during the course of the contract. What I'm trying to find out is whether there come new agreements during that three-year period or whether there merely come decisions by tribunals set up to de-

termine disputes under the contract. A. There is no new agreement that I know of.

The Court: This morning I was talking about contracts and he was talking about agreements. I thought they were one and the same, but I understand the distinction **[566]** that has been drawn. Thank you. I was asking the witness this morning about that, if you remember.

Mr. Wells: That's all. Thank you.

The Court: All right.

Mr. Hunter: Just one moment.

The Court: Yes, sir.

Mr. Wells: One other question.

Cross-Examination (Resumed)

By Mr. Wells

Q. Until Counsel interrogated you this afternoon, have you ever heard in this industry of a distinction between competitive rights and benefit rights? A. I am not acquainted with that term.

Mr. Wells: Thank you.

Mr. Hunter: No further questions.

Cross-Examination (Resumed)

By Mr. Fenton

Q. Mr. Henry, you were asked some questions about the procedure that is followed if a change of operation is requested by the company. A. Yes, sir.

Q. I'd like to hand you what has been marked as Plaintiff's **[567]** Exhibit 203(a) and refer you to the National Master Freight Agreement in this exhibit, and specifically to Article 5 beginning at Section 3 and continuing on through Section 5.

Now, are the procedures——

The Court: Article 5?

Mr. Fenton: It would be about Page 25, Your Honor, of that exhibit.

The Court: I have it.

Q. (By Mr. Fenton) Are the procedures that this change of operation committee follows set out in the National Master Freight Agreement there? A. (By the witness) Are they set out?

Q. Yes. A. No, not in Article 5.

Q. Where are they set out, sir? A. Well, Article 8(e) provides for change of operation.

Q. That is in the National Master Freight Agreement? A. Yes, sir.

Q. All right. Let's turn to Article 8(e).

Mr. Wells: Page 56.

Mr. Fenton: All right. Page 56, Plaintiff's Exhibit 203(a).

Q. (By Mr. Fenton) At Article 8(e), entitled Change of Operation, is it your testimony that this is the procedure that this change of operation committee would follow, sir? **[568]** A. (By the witness) Well, this doesn't specifically set out the exact procedures other than right in the first sentence, first couple of sentences, it provides for it, and then the contract itself provides for appropriate committees to be established.

Q. Which contract are you referring to, sir? A. I am referring to the Master Agreement. I am referring to the supplement agreement.

Q. Right. Now, I believe you testified in response to one of Mr. Wells' questions that if there is a deadlock by a state committee that it would go to a joint conference committee, and if not resolved there, it would go to a national committee, is that correct? A. Yes, sir.

Q. Is the decision of this national committee final then? A. Yes, sir. At any level, if there is a decision, it is final and binding on both parties.

Q. Now, were you here this morning when I asked Mr. Wilkins a question involving a possible change of operations between Los Angeles and Dallas? A. No, sir, I was not here during his whole testimony, and I don't recall you asking him that question.

Q. All right. Well, assuming the company does want to establish a change of operations involving its Los Angeles and Dallas terminals, and Los Angeles is covered by the Western **[569]** Supplement and Dallas is covered by the Southern Supplement. Agreed? A. Yes, sir.

Q. Would that request go to a joint conference committee? A. No, sir.

Q. Where would it go, sir? A. Because it is a more than one conference, a multi-conference. The employer would be obliged under the rules of procedure to address itself to the union chairman, Mr. Fitzsimmons, and the employer chairman of the national committee, Mr. Beagle, and in addressing ourselves we would indicate our present operation and proposed operation, and prevail upon that committee to assign it to an appropriate committee for hearing.

Q. Now, what is that committee that you refer to that Mr. Fitzsimmons and Mr. Beagle are involved with? A. That is known as the National Committee.

Q. Who is Mr. Fitzsimmons to whom you refer? A. He is the President of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

Q. Mr. Beagle? A. He is the Chairman of the Negotiating Committee of Trucking Employers, Inc., and he also serves as General Counsel of Trucking Employers, Inc.

Q. All right. And then what happens, sir, after you submit this? **[570]** A. They then assign it to either the West or the Southern Conference for hearing, designating at that time that because it is a multi-conference that both conferences in this particular case would be represented. They notify the local unions and it is then set for hearing. You are advised as to the date and time that it is set for hearing.

Q. All right. And then what happens? A. Well, depending on the date and time, the employer presents himself, the effected locals have already been notified by return receipt mail, they are present. In this particular case the employer is the moving party, so generally what I have done, I have read my proposal into the record so that there would be no question as to what we are talking about, providing substantial copies for every committee member to know what we're talking about. The local union, if they have questions or objections within the meaning of the contract, they raise them. The employer rebuts them. In fact, frequently there may be questions that the union or the employer have not asked or projected, and the committee, in the interest of the thing being disposed of correctly, will ask questions and proceeding much like this, if you will, and then the parties are excused, the parties being the employer and the involved local union, and the committee members go into an Executive Session and they elect to pass on it or reject it. If they pass on it, why, then, it is effective.

[571] I got ahead of myself just a little bit. They will generally, as a matter of procedure, ask you if you are granted this change of operation when would it be effective, you know, and based on that procedure the employer either gets the change of operation or he doesn't.

Q. Now, would it ever be possible for this committee to deadlock? A. You bet. It's happened.

Q. What happens then? A. Then, it is sent to the National Committee in Washington D.C., which meets quarterly.

Q. Then what happens? A. Well, that committee, like the lower-level committee, is made up of representatives, equal number of union, union participants, and an equal number of employer participants. Then, between those two divisions, again the involved effected conferences are equally represented, and at that point they may rule contrary—well, not contrary, there wasn't any decision, they got a deadlock, but they may rule in fact that you get it. On the other hand they may rule against you, any they, too, could be deadlocked. That could even happen. If they are deadlocked, there is no place to go.

Q. In other words, you can't put the proposals in if the National Committee deadlocks, correct? A. No, sir.

[572] Q. Now, are these deadlocks on the first level you described a common occurrence? A. Yes, sir.

Q. So it is—— A. Well, not—I don't mean to be flagrant. The majority aren't. I would say that in each state level meeting probably ten percent, maybe fifteen percent would be deadlocked.

Q. Now, going back to your first level of committee again, you stated that your commission goes to Mr. Fitzsimmons and Mr. Beagle. Now, the committee that is set up after that, who appoints that committee, how is that chosen? A. It is determined by the respective chairmen.

Q. That is Mr. Fitzsimmons and Mr. Beagle? A. Yes, sir.

Q. What about the National Committee to which a deadlock on the first committee level would go, who chooses that committee? A. Is your question who composes the National Committee?

Q. Yes. And how is it determined who will comprise the National Committee? A. Well——

Q. If you know. A. ——I don't know. I can't speak for the union. But I can speak for the employers. Each conference is represented at the National Committee.

Q. Now, you testified that after the negotiations occur **[573]** with respect to the National Master Freight Agreement and conference supplement, that on the employers' side they go back to the Executive Policy Committee, is that correct? A. Yes, sir.

Q. And that Policy Committee has to approve or disapprove of them. A. Yes, sir.

Q. Now, after that Policy Committee approves of the National Master Freight Agreement and the various supplements, can an individual employer decide not to abide by it? A. No. My answer is no.

Q. No, he cannot? A. Right.

The Court: He's bound right then whether he signs it or not.

A. (By the witness) Right, because he has already given his power of attorney.

The Court: Power of attorney is universal.

A. (By the witness) Yes, sir.

Q. (By Mr. Wells) Perhaps I misunderstood one thing, Mr. Henry. Were you indicating who selected the union committees at any level? A. (By the witness) Well, I did, Mr. Wells, and——

Q. At what level? A. Well, at all levels. I don't mean to imply, however, **[574]** that Mr. Fitzsimmons appoints them at all levels.

Q. Well, what is your knowledge in that regard? A. As far as the unions?

Q. Yes. A. I don't have any knowledge at the first and second levels.

Q. Even at the conference or at the multi-conference level. You just know that at the conference level there are union representatives somehow appointed at that level and similarly at the multi-conference level. A. Yes, sir.

Q. But you did indicate that at that national level you understood how the union appointees were appointed. A. No, I testified that I did not know how the union representatives were appointed.

Mr. Wells: Thank you.

The Court: Let me ask, where does this state conference come in? The state level you mentioned, the state level, is that the same as the conference level?

A. (By the witness) No.

The Court: That is a preceding step?

A. (By the witness) Yes, sir, that is a lesser level.

The Court: So that is the first step, as a matter of fact, after it gets out of the local union-local employers, it goes to the state level, then the conference and then the multi-conference, then the national.

[575] By the Witness: A. The only time you get involved, Your Honor, with a multi-conference hearing is if in fact it is a change of operations involving people in more than——

The Court: Dallas and Los Angeles, for instance.

By the Witness: A. Yes, sir.

The Court: I understand.

Mr. Fenton may have some more questions.

Mr. Fenton: Just one moment.

Cross-Examination (Resumed)

By Mr. Fenton

Q. Now, Mr. Henry, if there should be a deadlock at a multi-conference committee level, does the company or can the—pardon me. Let me restate that question.

Assume that the decision of the multi-state conference committee is adverse to the employer or the employer does not agree with it, can the employer take an appeal from that decision? A. Well, no. Here is what can happen. Can they make **[377]** a formal appeal? No, but what can happen, because through the contract that both parties commit themselves is that the decision of that committee will be final and binding. However, there is isolated situations, meaning not too common, where either party, the party having received the adverse decision, if he can honestly and objectively come up with some new **[576]** substantial information in support of his original contention, he can petition the appropriate committee for a rehearing based on new evidence, and at that point the evidence is considered and it may be considered by the committee to be new and substantial, or they may agree that it is not new, it is not substantial, and that the original decision stands. But if I may, Mr. Fenton, you were talking about a multi-conference. About the only time that you get involved in a multi-conference hearing is if it is in respect to a change of operations, but all other items of interpretation of dispute are not—there is no multi-conference committee per se, not to my knowledge.

Q. Now, if you have a dispute involving seniority within a conference, that will be handled by a conference committee rather than by a state committee, would it not? A. No. Most contracts—most contracts provide the first level is a state level. If the matter is not resolved or if it's deadlocked, it is then referred to the joint area committee, which is the conference committee.

Q. All right. Assuming that you had a seniority issue involving a terminal at, let's say, Dallas and another terminal at Memphis, Tennessee, both are within the Southern Conference, but they are within different states. Now, would you not have to have that resolved by a conference committee? A. You mean if the dispute evolved out of the same issue?

Q. Well, assuming a change of operations between those **[577]** terminals, assume you wanted to redomicile drivers that you had in Dallas to Memphis, Tennessee. A. Well, likely what would happen, because it evolved out of a change of operations, the issue would probably be referred by the state committee to the change of operations committee, who made the original determination. In other words, they, as a practical matter, the state committee would accept the grievance, make no mistake of that, they would accept it, but they would probably pas it on to the joint area committee to that respective change committee for disposition because it was that committee that was involved in it in the outset.

Q. All right, referring you again to Plaintiff's Exhibit 203(a) to the National Master Freight Agreement, and to Article 5, Section 3, and this refers to mergers and absorbing the business of other employers. Are these the proceedings that were followed at the time of the merger of T.I.M.E. Freight, DC International and LASME in 1969? A. Well, I was not in the employ of the company at that time, but I did testify upon search of the company records that all three companies were parties to this agreement, so I would have to conclude if that is the —or have to assume that the language was followed.

Q. And the language you are referring to is that in the National Master Freight Agreement. A. Yes, sir.

[578] Q. All right. A. There are many subjects within this Article 5 setting out all sorts of conditions, whether they are solvent, insolvent, what have you.

Q. Right. You were referred to the name of Mr. Fitzsimmons at the end of these various supplements and also at the end of the National Master Freight Agreement. Isn't it true that Mr. Fitzsimmons' name appears at the end of all of the supplements and each National Master Freight Agreement, which is included with those supplements, to your knowledge? A. Well. on this particular one it does. However, it appears—Mr. Fitz-

simmons' signature appears in the context of being a chairman of the National Over-The-Road and City cartage Policy Negotiating Committee, not in context of being a principal officer of the International.

The Court: You're referring to the certificate above the approval, approval as to form only?

Mr. Fenton: Yes, specifically it would be Page 183 of the first contract and Plaintiff's Exhibit 203(a).

The Court: What page?

Mr. Fenton: Page 183, Your Honor. On the supplements, and it would be——

Mr. Wells: If Your Honor please, you have the city cartage one and he is referring to the over-the-road one is the difference, but I think you are both referring to **[579]** the approval as to form only provision.

The Court: You are saying that the International did not become a party to them.

Mr. Wells: Yes, sir.

Q. (By Mr. Fenton) Is it true that with respect to all of the supplements that Mr. Fitzsimmons' name appears at the end as it does at Page 183 of the first agreement in Plaintiff's Exhibit 203 (a)? A. (By the witness) Well, yes, it appears, but only attesting as to the form of the contract.

Q. But it does appear behind each one of the supplements, to your knowledge.

The Court: Counsel, what is your point here, that they are a party to the agreement by virtue of that?

Mr. Fenton: My point is that they are involved in the negotiations and that they have to approve in fact. Of course, they do approve the contents of these various agreements.

The Court: Not that they are a party to it.

A. (By the witness) He appears at the rear of the supplements as chairman of the negotiating committee and then he appears as general vice president certifying as to the form only.

Q. (By Mr. Fenton) Does that indicate that the Interna- **[580]** tional has approved the form of that contract? A. (By the witness) The form of it.

Q. And that includes the contents of the contract, does it not? A. Yes, but they very carefully assume no liability.

Q. We won't go into the legal implications.

The Court: I have read it. Whether you want to go into it or not, I have already read it. It's in evidence.

Mr. Fenton: No further questions.

Mr. Wells: No further questions.

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[582] **CLAY GEORGE,**

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

[583] **Direct Examination**

By Mr. Hunter

Q. Would you state your name for the record? A. Clay George.

Q. And your address? A. 5423—16th Place, Lubbock.

Q. What is your present employer? A. Department of Psychology, Texas Tech University.

Q. What is your current position with Texas Tech? A. Professor of psychology.

Q. Professor George, could you briefly summarize your educational background? A. I received a B.S. degree in psychology with a minor in sociology from Arizona State University in 1949; a Master of Arts degree with a major in psychology, a minor in social anthropology from the University of Arizona in 1953; PhD. degree in psychology from the University of Houston in 1962.

Q. Professor George, could you briefly summarize your professional employment background? A. From 1953 to 1956 I was instructor and counselor at the Texas A & M University, then College; from 1956 to 1958 I was a full-time doctoral student at the University, student lecturer in psychology, part-time, at the Univeristy, and research psychologist, part-time, for the Texas A & M Research Foundation. From 1958 to 1961, I was assistant professor of **[584]** psychology and director of the reading clinic at Arizona State University, also part-time research.

In 1961 I became a research scientist and later senior scientist for George Washington University, working for their branch called the Human Resources Research Office, which did contract research for the United States Army at Fort Benning, Georgia. That work involved research in training, the operation of training and operating organizations, and had to do with the interaction of persons, including persons of various ethnic group membership and forming operating organizations and determining the degree to which they could meet their mission.

And in 1967 I came to Texas Tech University first as an associate professor, and in 1970 promoted to professor of psychology where I have set up programs in social psychology at the undergraduate and graduate level, where I have been chairing considerable numbers of dissertations and theses, partly in departments other than my own, such as sociology, food and nutrition, industrial engineering and business management.

Many of these researches which I have been directing, helping to direct, have to do with the development of motivation

and differences among people of different ethnic group backgrounds.

I have also been conducting research part-time for the **[585]** United States Army since 1962—no, since 1967.

Q. Okay. Professor George, you have identified the employers with whom you have been associated professionally. Could you please state some of the ancillary projects you conducted while employed by these various employers? A. Specific kinds of research and application projects, evaluating Army training programs, setting up remedial training programs or remedial learning programs in places like the Maricopa Indian Reservation School, which is a federal school, in effect, near Scottsdale, Arizona; consulting with Goodyear Aircraft on the development of research procedures for determining the abilities of people to get information from radar and similar type material; research on small group dynamics and operations, research on larger social organizations called Systems Approach to Research, where one looks at the complex set of factors which vary deferentially with each other to effect the ability of the organization to perform, to carry out the functions.

Q. Any other projects with regard to ancillary matters that you conducted while employed at Texas Tech? A. One part—well, the duties here are very complex, some of the theses and dissertations we have looked into have dealt with dietary matters of Mexican-American rural families on the South Plains area; the development of motivations in white and black children, what is sometimes called a demographic **[586]** gap. That is the gap between the characteristics of persons in various ethnic groups which are closely related to ethnic group membership, such characteristics as standard death rate, social economic level, educational level and so on.

Q. You indicated that you had dealt in studies involving motivational characteristics of black and white children. Any specific locations involved in those studies? A. The student

whose research I have been conducting have carried out their research, since they are on internship for a year, in such places as Miami, New York City, Galveston, as well as in Lubbock.

Q. Professor George, are you associated with any professional or honor societies? A. I am a member of the American Psychological Association, four divisions thereof, and the Community Personal Psychology Association, which are the two most important for the present purposes; the American Association for Advancement of the Sciences and the New York Academy of Sciences.

Q. Have you been listed in any publications as a result of your professional activity? A. I am listed in the American Men and Women of Science and in the International Scholars Directory.

Q. Have you authored any publications in the area of social psychology? A. I have approximately thirty-two publications. A number **[587]** in American Psychological Association journals, some in educational journals, a considerable number of which are technical reports and consulting reports. Primarily, those are for various governmental and private agencies.

Q. Is there any major theme to the bulk of your publications? A. All deal with those aspects of motivation and of personality which determine or influence ones behavior in social settings or with behavior as it is influenced by social setting directly.

Q. Have you ever been asked to read any papers to any professional societies? A. I have read some ten papers to such bodies as the American Psychological Association, two state associations, twice to the Army Human Factors Conferences, and I recently chaired a conference on human factors.

Q. Professor George, could you define the matter of social psychology? A. Social psychology is a branch of psychology which is primarily concerned with the way a person's behavior is influenced by other persons rather than the way their behavior is influenced by external or physical events, like——

Q. What applicability, if any, does social psychology have to the study of minority groups? A. Social psychologists have a long history of studies **[588]** involving minority group behavior, and the attitudes that exist toward persons of various groups, persons within various groups toward various other groups. Originally the largest effort wasn't the attitudinal matter. More and more the efforts have been in the way people treat each other as a function of the group as it affects the development of the persons in those particular groups, so that much of this research, for example, was used by the Supreme Court in determining that separate schools were by definition unequal schools.

Q. What applicability, if any, does social psychology have to the study of employment patterns and employment methods? A. That part of industrial psychology known as organizational is a joint offshoot of industrial and social psychology, and that has to do with interaction between—interplay between management and worker and the way workers get together as a function of their characteristics.

Q. I see. What role does the discipline of statistics have in the role of psychology? A. Statistics are both descriptive and hypotheses. They play a very major role. We wouldn't have philosophers if we didn't have statistics as a check on our concepts.

Q. What specific example could you give to illustrate the usage? A. If there is a hypothesis that two factors related to **[589]** each other, one would apply a statistical test, correlation for correlation, or to check that. If it is hypothesized that one group does better or worse than other groups on a certain kind of task, one would test the probability that the average performances of those various groups might have occurred by chance or might not have occurred by chance.

Q. What is your personal background in the study of statistics? A. Following thirteen semester hours of mathematics through deferential calculus, I had three semesters of under-

graduate statistics, six semester hours of graduate level statistic training.

Q. Have you ever taught statistics? A. I taught a statistic course at Arizona State University and currently am directing the research of graduate students, training them in the appropriate use of statistical methodology.

Q. Professor George, are you familiar with the subject matter of this civil action involving the United States Government and defendant, T.I.M.E.-DC? A. Yes. I have examined some case authority documents, some cause of action and some documents made available by Mr. Hutchinson of T.I.M.E.-DC.

Q. What were the nature of the documents submitted to you by Mr. Hutchinson? A. They showed terminal by terminal the percentage of **[590]** employees that are white, the percentage of employees that are black, the percentage of employees that are Spanish surnamed Americans, and percentage other minority, and along with that were certain census data showing the percentage of each group in the standard metropolitan statistical area.

The Court: In the city or the metropolitan area?

A. (By the witness) The metropolitan area.

Q. (By Mr. Hunter) Professor George, I submit to you a document which was previously identified as Plaintiff's Exhibit 241. Are you familiar with that document? A. (By the witness) Yes, I have inspected this document.

Q. Have you conducted a study of that document, also? A. Yes.

Q. Pursuant to your study of the various materials submitted to you, are you familiar with the United States Census Bureau data as it relates to statistics as they relate to where T.I.M.E.-DC has terminal locations? A. Yes.

Q. Have you also familiarized yourself with the percentage of minorities that the census bureau data discloses present in those various locations? A. Yes, generally familiar.

Q. Are you also familiar with T.I.M.E.-DC's employment statistics as they relate to number of employees and number of **[591]** minorities at each of their specific locations? A. Yes.

Q. In what matter did you become familiar with these various statistics? A. Through the documents made available by Mr. Hutchinson. For example, a document entitled Minorities as a Percentage of Population Compared to T.I.M.E.-DC's Percentage of Minority Employees as of 12/31/71, and through examination of various Census Bureau reports available in the University library.

Q. Pursuant to your study, have you made a comparison of the various statistics as reflected by the United States Census Bureau statistics and T.I.M.E.-DC employment statistics at each location? A. Yes.

Q. Have you, as a result of your various studies and comparisons, formed any conclusions based upon the comparison of the two sets of statistics? A. I formed some strong impressions and the major impression is that one really cannot form conclusions from these kinds of statistical evidence that the numerical data available are not sufficient for a conclusion about this kind of question.

If I may refer to Plaintiff's Exhibit 241, one of the first things that one notices is that there are a number of facilities where the percentage by T.I.M.E.-DC is actually greater than the percentage of Negro in the given **[592]** standard metropolitan statistical area, such as Denever, and Phoenix, Arizona on the second page is another example, and that this tends to occur only where there are large numbers of employees, large numbers of employees as known to me by the documents made available by Mr. Hutchinson.

Q. Are you referring to number of employees at the T.I.M.E.-DC location? A. At the given terminal, right, where there is a large number of employees in a given terminal and where there are large numbers of persons available for employment in the standard metropolitan statistical area. Then there is a tendency for the employment record to look relatively good. That is for T.I.M.E.-DC to be employing relatively large numbers of Negroes relative to the percentage in the metropolitan area, but where the terminal is in a fairly small facility, or drawing from a fairly small population of potential employees, or where there are just very, very few employees at all on the part of T.I.M.E.-DC. Then the data looks as though there are fewer Negroes being hired than would be expected.

The Court: Well, now, where would be an example of that?

A. (By the witness) Hoobs, New Mexico on the first page.

The Court: All right.

A. (By the witness) One, two, three, four, five, six, seven from the bottom.

[593] The Court: Yes, sir, I see.

A. (By the witness) One hundred percent white employees. From the city data it would appear that there should be perhaps approximately seven percent non-white employees, but when one realizes that there are only four employees in Hobbs period, it becomes apparent that a change of a single employee would change the figures so that if that happened to be a minority group employee, it would immediately have twenty-five percent minority group employees in that facility.

Wherever there is a small, very small number of employees, and this number is crucial to being able to conclude anything from these tables. One needs to have some notion of the working age population and the number of employees in the place, and there is so much more striking examples than that in a number of places, like on the second page, fourth from the

bottom, Tacoma, looks bad again. It's a hundred percent employees white, while there are only ninety-three percent whites in the standard metropolitan statistical area, but there is only approximately one employee in Tacoma and one employee would most likely by chance, with no—with a non-chance discriminating factor coming in at all, to have come from the ninety-three percent population rather than the seven percent population.

Toronto below that, same pattern. There are quite a number of very small——

The Court: Talk about San Antonio there a **[594]** minute. What is your analysis of that?

A. (By the witness) All right. Let me find that quickly here. San Antonio. I don't have the number of employees here for San Antonio.

The Court: Well, it's a little aside from what you're talking about. What is the SMSA?

A. (By the witness) Standard Metropolitan Statistical Area.

The Court: They said there are ninety-two percent white, 6.65 Negro and 1.25 other.

A. (By the witness) Yes, Your Honor.

The Court: Where would the Mexican-American be in that classification?

A. (By the witness) The Mexican-American in that classification from census data are going to be in the white category, but for the T.I.M.E.-DC data, they are going to be in the other category.

The Court: So that doesn't relate very well, does it?

A. (By the witness) This is another problem in interpreting this data.

The Court: Go ahead. That was kind of off the line of thought you had. I just wanted to ask you.

A. (By the witness) San Antonio and El Paso are both good examples, because in those places there are large numbers **[595]** or large percentages in the other category, and those are almost surely primarily Spanish surnamed Americans, although they don't——

The Court: You just can't use those figures, can you?

A. (By the witness) You really can't make these comparisons across appropriately. Actually, you have to have large numbers of employees before you can conclude th' : you are looking at non-chance deviations, and you do have the problem of Spanish surnamed differently categorized in the different cases, but I think the major potential error is that not taking into account the number of employees. If you take into account the number of employees, the hundred percenters add up to nineteen, but approximately half of those have less than ten employees. Another five have ten to nineteen employees; only two were in the twenty to thirty-nine range, three are in the forty plus range, and one of those is Canadian, one of them is Sallisaw, for which there is no evidence for any appreciable number of minority groups in the city. And the only one that is really questionable is Buffalo, which is relevant in the area and has approximately forty-seven employees, but even there these are being drawn from some six hundred thousand persons of working age, and it is easy to imagine drawing from a pool of six hundred thousand as much as fifty and picking all persons from the ninety-two percent majority group.

[596] Q. (By Mr. Hunter) Professor George, having examined that document and various other material submitted to you, what is your professional opinion as to a comparison of the United States Census Bureau data which reflects the percentage of minorities in a particular community with those of the same minority employed by T.I.M.E.-DC? A. (By the witness) In a

sense, the data available are too imprecise. We need to have a lot more information than the percentages of minority groups in the standard metropolitan statistical area, and the percentage in a facility in that area, and the number of people employed and the number of people available for employment.

Even knowing these four things, we still don't have fine enough figures to make any kind of real conclusions from these data, or even any indication.

Q. I submit a document which has been previously entered into evidence as Defendants' Exhibit BBB. Are you familiar with that document? A. Yes.

Q. In what manner are you familiar with that document? A. I selected and put these material together.

Q. Is this the result of your study of the various materials submitted to you? A. Yes.

Q. In examining that document, could you identify the **[597]** significance of Table 1? A. Table 1 has to do with the question of age structure within populations. If the average age of a given population is much younger than that of another population, then that given population will have fewer persons employed because a larger number of their members will be under the age of employment. So it is important to see if this may be happening among the three ethnic groups at question.

Table 1 has to do with fertility rates of women age thirty-five to forty-four. These particular ages is to get in most of the childbearing that is likely to occur. The average number for Mexican-Americans was determined to be 4.4; for blacks, 3.6, for a total population of 3.0, which indicates that where there are larger numbers of children per family in a given ethnic groups, they are likely to be a lower percentage of that group which is of employable age.

Table 2——

The Court: Wait a minute. Explain that thirty-five to forty-four again.

A. (By the witness) This age was picked by the Census Bureau because most childbearing will have occurred in most women.

The Court: Will have occurred?

A. (By the witness) Yes, so that these will be completed families in most cases.

[598] The Court: I understand.

Q. (By Mr. Hunter) With reference to Table 2, what is the significance of that? A. (By the witness) Table 2 has the median ages for whites and non-whites, whites including Spanish surnamed Americans in this particular kind of breakdown, and the point here is that if non-whites have lower median ages, more of them will be age below when people go to work in our society. It is indicated that for 1950 non-white age is 4.7 years. Well, there is a median difference, and roughly for practical purposes we can call it an average age of 4.7 years younger than whites. In 1960 it is 6.8 years younger than whites and for 1969 it's 8.1 years younger than whites.

Q. What is the significance of the increasing difference? A. It looks as though white median ages are not decreasing very much over decades, which indirectly reflects the fact that our birth rates are stabilizing, while for non-white the median age is decreasing, apparently over decades. Of course, this may change in decades, but at the moment, at least, there tends to be a decreasing age for persons defined in the census as non-whites, which would indicate that that population would be getting younger. That is, there would be actually larger families.

Q. Okay. You have indicated earlier that in this data in Table 1 and 2 white would include Spanish surnamed persons **[599]** A. Right.

Q. Accordingly, if Spanish surnamed people were excluded from the white figures, what tendency would this have? A. You would expect it to be more marked from Table 1, which

shows the Mexican-American families are larger than blacks or whites, or Anglos, one should say.

Table 3 makes the same point. The percentage of each ethnic group in the twenty to sixty-four years of age bracket, which will get most of the working age force, whites approximately fifty-three percent, non-whites, approximately forty-eight percent, so there are more whites relative to the total number of whites who are working age than would be true of non-white populations.

Q. Again, this white calculation includes Spanish surnamed, is that correct? A. Right.

Q. If that was excluded, that difference, it would be even greater. A. Somewhat, but you're talking about a relatively small and almost unmeasurable population when you talk about Spanish surnamed.

The Court: What is the percentage in Texas, for instance?

A. (By the witness) In Texas?

The Court: You're talking about nationwide **[600]** on these figures, are you not?

A. (By the witness) Correct.

The Court: That's all right. You needn't answer that.

A. (By the witness) Well, I have seen an estimate of ten percent. That is the most recent.

The Court: But this is nationwide, these figures.

A. (By the witness) Right. The nationwide estimate is ten percent. There are Irish names, there are American Indians who have Spanish surnames, there are a number of problems in trying to get a count on that.

Q. (By Mr. Hunter) With reference to Table 4, could you give us the significance of that table? A. (By the witness) Okay. Table 4 was developed for United States Commission

on Civil Rights to determine what percentage of high school students and college students should be under a hypothesis of no bias or no discrimination attending high schools and colleges.

From the Anglo-Spanish surnamed American bracket, any sub groups, they did this by counting the number in five southwestern states. These included Arizona, California, Colorado, New Mexico and Texas. This is 1960 data. Counting the number age zero to four and said that number will be a base number, and we will figure the number in each succeeding **[601]** age range as a percentage of that, so the large number of Anglo zero to four compared to the number of Anglos age twenty to twenty-four, such that there are only 58.4 percent as many people of the older age as of the younger age.

For the Spanish surnamed, if you take the zero to four years as a hundred percent, the number of people in that category, and take that and take the number of persons age twenty to twenty-four as a percentage of that, it's only 45.2 percent. That is, there is a steeper drop so that you have relatively fewer old persons and relatively more virtually infants in the zero to four category.

The black ethnic group shows essentially the same picture as Spanish surnamed. 46.4 percent at age twenty to twenty-four.

This table, of course, essentially tells what the other tables tell for the population as a whole, but the major significance is the development of this table by the Commission on Civil Rights, so that they could correct for different age structures among the different ethnic groups in trying to determine how many of each group would be expected to be found in high schools and colleges.

Q. Okay. Professor George, Table 5 is next. Does that have a relationship to Table 1, 2, 3 and 4, or is that a separate matter? A. This again is a separate kind of development. The first **[602]** four tables point out the importance of taking age structures within population into account. Once it was done,

there are still others and less easily qualified characteristics that may affect any employers record of employing minority group persons.

An important point that is often brought out as a point dealing with general nutrition, general vitality, general health status, general ability to operate in, get along in, exert influence over, the social system per se, there are not easily obtainable measures on each one of these little things, but there is a large, not too precise, but still very meaningful kind of index developed by the Census Bureau called Socio-Economic Status.

Q. What is Socio-Economic Status? A. The exact measurement process varies some from one census period to another, but in essence, what is looked at is the income, the educational level, the possession of automobiles, the possession of telephones, radios, subscriptions to newspapers, magazines. In general, being in communication, being in contact, whether there is a bathroom in the home or not, kind of a list of things that roughly measure goodness of living or goodness of life.

Q. With regard to Table 5, this socio-economic status figures you have are from the United States Census Bureau. A. These are taken directly from the Census Bureau.

[603] Q. I see. A. The possibility is that—I should say the theory, a theory is in social anthropolgy and sociology and social psychology is that if a subject group is maintained, is generally deprived, depressed, kept down, maintained at low socio-economic levels, there tends to become in some proportions of that sub-group population a kind of sub-culture characterized by apathy, by helplessness, by improper diet, by high frequency of illness, by a number of things that sociologists call social pathologies, which is kind of a horrible language, but sometimes we have to use it.

The indications from this table are that the highest socio-economic blacks are found in the west. The lowest socio-economic

blacks are found in the south and these are regions as defined by the census, while there are moderate levels in the northeast and north central. They are very, very close to each other. One could combine those two.

It is also shown, of course, that there are what Mr. Patterson happens to call a demographic gap, that is, that the Negro in each region is lower in socio-economic status that than of the comparable white group in that region, but the great, really striking differences are between the south and west Negro. This difference, which was hypothesized, might relate to the success with which T.I.M.E.-DC has been able to employ relatively large numbers of blacks in the various **[604]** facilities in different parts of the country.

So what was done to develop Table 6, based on the rationale developed in Table 5, was to re-order the T.I.M.E.-DC data and ignore their Western Division, but take the terminals that are in the west as defined by the Census Bureau, find out whether each of these was particularly high or particularly low in terms of its variance from black hiring, as it would have been expected, based on the percentage of blacks in the standard metropolitan statistical area relevant to that terminal, but the study was limited to only those facilities with over fifty employees for the same reasons outlined briefly before. If you are not looking at a fairly large sample, your statistical percentages are going to be highly misleading in many instances. So you have to look at some fair number before—fairly large number before you can have anything to look at at all.

Q. Am I correct, Professor George, in that assuming that these totals refer to T.I.M.E.-DC terminals with fifty or more employees? A. Correct. There are twenty-six such terminals. I just simply divided those into half, or the thirteen that looked best, that of low variance between what was or would be expected SMSA data and the percent employed and the thirteen that looked less good where there was greater variation.

All seven of the terminals in the west where socio-economic status is relatively high for Negro are in the good hiring half **[605]** of the twenty-six terminals.

Q. Okay. Professor George, for the sake of clarity, on column 1 you have variance from expected black hiring. What does that constitute? A. Okay. The plus 2.7 there under the low or plus refers to Denver, for example. That is, Denver actually had a larger number of Negroes employed in the terminal there, the T.I.M.E.-DC terminal there than there were in the SMSA for Denver, so that is the kind of variance that is a plus variance, and the others are plus or below to a relatively small degree, so it is a low variance or actually a plus direction for those thirteen terminals that go into that top row. There were not enough terminals in the two Northern Regions to look at each one separately, so those were combined, and again the justification is in part that the socio-economic status of Negroes in those two regions average essentially the same anyway, so those are combined into a Northern Region. One of those eight fell in the good hiring practices category, and seven of them fell into the relatively less good hiring practices category.

For the south, five apparently would fall into the low, or I should say the better hiring category, and six into the less good hiring category, but four of those are in Texas facilities, are essentially western communities and probably should be considered with the higher socio-economic west than the lower economic south. If that were done, it would show a **[606]** very strong trend for T.I.M.E.-DC to be hiring relatively more black employees in those communities which exist in regions where blacks in general have a relatively high socio-economic status, more education, more communication with the rest of the world, more access to transportation and so on, relevant kind of factors there. So an alternative hypothesis opened up is that T.I.M.E.-DC may be hiring blacks in proportion to the availability of blacks who have pulled up by the boot straps enough to apply for work, to keep work long enough to end up in the

statistics, and there would need to be some permanence in the work experience to end up in the statistics, so this persistence characteristic is surely also important.

Q. Okay. Professor George, what was the basis again of including the four Texas facilities in which you consider them essentially western communities? A. These include two Lubbock facilities, El Paso facility, and a Dallas facility. In all of these you have quite a bit of Mexican-American influence, or Spanish surnamed influence. You have a subcultural characteristic more of the western United States than of the Southern United States. Texas is more [illegible] Arizona and New Mexico than it is like Mississippi and Louisiana, for example.

Q. Is this a conclusion held by people other than you, also? A. Yes. Texas is frequently classified, and all classifica- **[607]** tions are somewhat arbitrary, frequently classified as western or southwestern rather than southern.

Q. By whom? A. By demographers. There are a number of sociologists and demographers who would follow this kind of classification.

Q. Examining Table 7, what is the significance of that as a result of your studies? A. One characteristic of extremely socioeconomic status is that you are going to have higher death rates in the population, and in a way death rate comes closer to the question of vitality level, the question of relative freedom from illness, the availability of medical care, things like this, which are involved in one's continued improvement over a period of time. These data are standardized death rates. These are—these represent the number of persons out of each thousand persons in the named ethnic group who died in a given year. So for the first state, Alabama, listed, would you say in 1950 out of each thousand whites, nine died, and out of each thousand Negroes, 13.7 died, or about five more Negroes per thousand than whites per thousand.

For 1960 the difference is still there for the southern states between white and black, but it is not quite as large, and this is what Mr. Patterson has called a demographic gap. It's beginning to close. It is closing very, very slowly.

It is similar for fifteen non-southern states. We do **[608]** see the same difference here, although the differences are again not quite as great. This is one example of a special categorizing of states into a region for a particular kind of study. These southern states certainly do not include Texas, but they are picked to be most representative of states where what might be called the southern culture is carried on while the fifteen non-southern states exclude places like New York or other places that are so large that they can't be matched with a comparable southern state, but are typical of non-southern states which can generally be compared on some important basis with the southern states. So for a given purpose, the way one would categorize states, a region would have some leeway.

Q. What is the significance of the distinction between the south and non-south states? A. Actually, at first glance, you can see some very high death rates in some southern states, and some equally high ones in some non-south states, but generally speaking, Negroes state by state, south or non-south, are exhibiting greater standardized death rates reflecting in part differences in availability of medical, proper nutrition, and so on, and these certainly have something to do with the vitality and the relative continuing freedom from illness that has something to do with holding jobs or even having or being able to get out and get a job or being able to accept a job.

[609] Again, we are looking at fairly general broad kind of statistics. We can get in a little bit finer, although not terribly so, and only for isolated cities here and there. Table 8 illustrates the new TB case rate for a hundred thousand population in New York City for 1969. It gives this for two factors, one population density, how many people are crowded into a block, how many families per building, how many people per room within

the building, which is kind of a crucial thing that goes into population density, and by income level. The new TB case rate per hundred thousand is highly sensitive to population density. For low income people living in highly densely populated places, and this hits particularly both Black Harlem and Puerto Rican Harlem, your new TB case rate was 79.7, which is dramatically higher than that of medium and higher income.

The Court: Does that prove anything more than it is highly contagious?

A. (By the witness) Yes, sir, because there are other variables involved. For example, high income people in high population density situations have less of it, and there are also a host of diseases that really are not contagious in the same way that tuberculosis is, like heart failure, for example. That is also related to density and income level. There are a number of health problems. It happened that this particular article was primarily concerned with this TB case rate, and a **[610]** part of the concern was that much of the problem is due to being able to find the case before it gets to be advanced. You do get quite a few in medium population low income, you do get quite a few in medium income, but they do get most of those before they are advanced cases, so they don't get so many deaths from it where you get the real debilitating situations where you have the low income, high density situation, and of course, part of it is an easier contagion. Also, people don't see physicians so often, so they don't get the diagnosis very quick. If they don't get the diagnosis very quick, it's going to be a much more serious outcome, and really highly debilitating as far as being able to work is concerned.

Now, in addition to these kinds of problems, there are certain customs that develop within some populations. One set of these customs defines what the social anthropologist, Oscar Louis has defined as the sub-culture of poverty. He uses this term much as sometimes we use the term hardcore unemployed. Sub-culture of poverty does not always occur when people are poor.

It occurs when people are poor and are apathetic, and feel helpless and have limited access to medical care and so on. So it is a whole interrelated set of factors that is defined as the sub-culture of poverty, of course, there are whites in the sub-culture as well as there are black and Mexican-Americans.

The Court: What was the question?

[611] Mr. Hunter: Pardon?

The Court: What was your question?

Mr. Hunter: The question is determining the validity of a comparison of mere statistics——

The Court: That is a statement. What is the question?

Mr. Hunter: The question addressed to him was in your professional opinion what is the validity of comparing minorities statistically as was available from the United States Census Bureau data with the statistics available in T.I.M.E.-DC employment statistics.

The Court: Has he related this table to T.I.M.E. employment yet?

Mr. Hunter: Yes, I believe he has.

The Court: Go ahead. Let's go to the next table then.

Q. (By Mr. Hunter) Go ahead, sir. A. (By the witness) A part of the sub-culture of poverty is that the social structure in that sub-culture is based mainly on family relationships and not on associations among persons in the same business, trade, profession, fraternal organization, private club, so on, so that one expects less mobility both within and between states when this sub-culture is occurring.

The date on Table 9 indicates, as have been indicated in **[612]** many other places, that there is more mobility both within and between states for white sub-population than for black sub-populations, and this has relevance to hiring because when it is

necessary to move from one place to another to get a job, there is a lesser willingness in some sub-populations than in others, and that willingness will be reflected in, almost surely will be reflected in unemployment statistics.

Q. Professor George, then what is the significance of the various tables beginning with 5 through 9 and including 10 with regard to the validity of using the kind of minority statistics used by the government to compare total numbers of minorities in communities against the percentage of those same minorities at T.I.M.E.-DC terminal locations? A. I think for each standard metropolitan statistical area, you would need to know a good deal more about the characteristics of the people that run the terminal and the characteristic of the population from whom people are hired, from which people are hired, the health status of these hiring groups, the skill levels of these groups from which one wishes to hire people, the motivational characteristics of these persons, age structure of these persons and so on.

In other words, we would need much finer statistics to really be able to interpret the relatively imprecise and approximate kind of statistics that we have available.

The Court: Well, let's see, you're saying **[613]** that there is just more factors to be taken into consideration.

A. (By the witness) Yes, sir, I am suggesting some of them.

The Court: Yes, sir. All right.

A. (By the witness) The final table in this series is a hypothetical curve by J. R. Cowan, D. W. Tiffany and P. M. Tiffany, Rehabilitation Psychologists, who probably have as much or more experience than anybody in the business with job rehabilitation programs. This is a program that is to develop some more favorable attitudes toward employment and to increase motivation for employment among the so-called hardcore employee. Tiffany points out that one of the real problems is that where there are lots of unemployed persons, and that is at the low skill end, there are relatively few job openings. Where

there are slightly fewer manpower resources than there are jobs available, you are at the high skill occupational level and the real problem that the employer faces is he tries to hire more minority group members and more hardcore unemployed is to fit increasingly more persons of average and lower relatively skilled level into decreasing numbers of jobs, and I believe that Tiffany's point is well taken here.

Q. Professor George, according, as a result of your various studies and your position as a social psychologist, if a comparison of statistics shows that T.I.M.E.-DC employs fewer minorities than live in the various communities it has locations, **[614]** give us your professional opinion as to whether or not that, in your mind, justifies a conclusion that T.I.M.E.-DC engages in a pattern and practice of discrimination throughout its business organization.

Mr. Fenton: Your Honor, I object to that question as asking for a legal conclusion which is outside the knowledge of this witness.

The Court: He has given the answer already in all these questions and that has been no, isn't it?

A. (By the witness) Yes, sir.

The Court: Let's let the answer in. It is merely a summary of what he has already testified to.

Mr. Fenton: I'll withdraw.

Mr. Hunter: I have no further questions of this witness.

The Court: Have you made any studies yourself taking in the facts that you say should be taken into consideration in order to make a determination for yourself as to whether or not there have been any pattern and practice of discrimination?

A. (By the witness) I tried, but I simply couldn't get enough information and enough variables to really be able to pin it down.

The Court: There's just not enough **[615]** available sources that you had, at least.

A. (By the witness) Yes, sir, I really don't think it is available period.

The Court: The only information available is that being used by the plaintiffs in this case, you just say it's not accurate enough under the circumstances that you have outlined.

A. (By the witness) Yes, Your Honor.

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[633] **JAMES W. FRAZIER,**

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schuler

Q. Will you state your full name for the record, please? A. James W. Frazier.

Q. What is your business address, Mr. Frazier? A. 29001 Hopkins Street in Hayward, California.

Q. What company are you with and what is your position? A. T.I.M.E.-DC, Incorporated. I am the Hayward, California terminal manager.

Q. How long have you been at Hayward, California? A. Two years, one month.

Q. And how long have you been with T.I.M.E.-DC? A. Seventeen years in August.

Q. Are you the same James Frazier who was deposed in Hayward, California about a year ago in connection with this lawsuit? A. That's correct, sir.

[634] Mr. Schuler: Your Honor, the testimony of this witness today is not offered in lieu of his deposition, it is offered in the nature of rebuttal to the testimony of Mr. Richard Stinson, who was a witness here last week.

The Court: All right. Now, I don't believe—Was Mr. Frazier's testimony summarized, was it one of the nineteen summaries?

Mr. Fenton: Yes, it was, Your Honor.

The Court: All right. But I will permit this testimony to come on it and while Mr. Frazier is here, if anybody wants to develop his testimony more fully, let's do it while he is here.

Q. (By Mr. Schuler) Mr. Frazier, do you know a Richard H. Stinson? A. (By the witness) Yes, sir.

Q. Were you at the Hayward terminal in March of 1969? A. No, sir.

Q. Were you at the Hayward terminal in early and mid 1971? A. Yes.

Q. And were you terminal manager at that time? A. Correct.

Q. Now, there has been some prior testimony in this record that Mr. Richard Stinson wrote to you to ask for a line driving job, and that he later came in and asked about applications; that he gave Mr. Foster a resume of his ability as a driver; **[635]** that he came back to see Mr. Foster later, he called Mr. Foster three or four times and never got an application.

Would you tell us whether you had any communication from Mr. Stinson in the early part of 1971?

Mr. Fenton: Your Honor, I object only to one statement in that predicate, and that is, that he never got an application. I believe Mr. Stinson's testimony was that he did get an application from Mr. Foster, but with that objection——

The Court: But that was never acted upon.

Mr. Fenton: ——we would let the record on Mr. Stinson's testimony reflect that. I have no objection. I just want to note that one exception.

Mr. Schuler: My understanding of the testimony was that he said that he did not get an application but the record will reveal it.

The Court: Your question, though, goes—Go ahead.

Mr. Schuler: Yes.

Q. (By Mr. Schuler) Did you receive an inquiry from Mr. Stinson? A. (By the witness) I received a letter dated April 26th, 1971, signed by a Mr. Stinson.

Q. Do you have a copy of that letter with you or the letter itself? **[636]** A. Yes, sir.

Q. May we have that, please?

Mr. Schuler: May we have this marked as an exhibit, please?

The Court: Yes.

Mr. Schuler: This will be Exhibit OOO.

Q. (By Mr. Schuler) The exhibit that is marked as OOO, is that the letter that you received with the signature of Mr. Stinson on it? A. (By the Witness) That's correct.

The Court: All right. I'm going to admit this. The purpose is for impeachment, I assume.

Mr. Schuler: We will make copies of this available.

(Defendant T.I.M.E.-DC's Exhibit OOO received into evidence by the Court as Defendant, T.I.M.E.-DC's Exhibit OOO —Letter.)

Q. (By Mr. Schuler) Mr. Frazier, did you hear from Mr. Stinson any time after you received this letter of April 26th? A. (By the Witness) Yes. I received a phone call some two weeks later, but I don't recall the date.

Q. And what was the substance of that phone call? A. Well, basically, he was inquiring as to whether we did have any positions. Just a general conversation, and at that time I just told him about the change of operations and the fact that we probably would be reducing the board rather than hiring.

[637] Q. Do you mean line driver board? A. Correct.

Q. And did you in fact advise him that there would be reductions rather than increases at that time? A. Told him there would probably be reductions. The change of operations hadn't been heard at that time.

Q. Did you tell him anything about the inquiry in his letter for an application, or anything about coming in? A. Yes. I asked him for a formal application for employment and told him he would be considered if and when we hired on that basis.

Q. Did he later come in? A. Yes, I met him later briefly, several months later, I believe, quite by chance.

Q. Was an application blank offered to him at that time when he came in? A. Yes, sir.

Q. Did he accept the application blank? A. It is my understanding he did not.

Q. Now, did you hear from him at any time after that? A. Yes, sir. Oh, perhaps three, maybe four months after I had met him, I had another telephone call.

Q. What did he say at that time? A. About the same general conversation that we had the first time. He asked if we had developed any openings and **[638]** stated again that he wanted to go to work for us if we had any openings.

Q. Did you have any conversation about an application blank when he called you that time? A. I did.

Q. What did he say and what did you say? A. He declined the application, stating that he considered this letter his application for employment.

Q. And he was referring back to this letter of April 26th, 1971? A. I assume he was. It was the only letter that he wrote me.

Q. Have you ever seen the signature of Mr. Stinson? A. No, sir.

Q. Do you know whether in fact he wrote this letter? A. No, sir, I don't really know.

Q. Is it sufficient for your purpose, for a person to write in and say he is a qualified driver? A. No, sir.

Q. Have you heard any further from Mr. Stinson? A. Not in several months.

Mr. Schuler: Thank you, Mr. Frazier. I have no further questions.

The Court: Refresh my memory here. Is **[639]** Mr. Stinson the one that is now working for another motor transportation company out there as a road driver?

Mr. Fenton: Your Honor, I believe he was working for either Transcon or Tri-State as a road driver, and then when they moved their operation from San Francisco to Omaha, he declined to go to Omaha, but he was employed as a road driver with one of those two companies.

The Court: I have him placed. Go ahead.

Cross-Examination

By Mr. Fenton

Q. Mr. Frazier, you have previously identified Defendants' Exhibit OOO, which is a letter addressed to you and signed by a Richard H. Stinson.

Now, in that letter does Mr. Stinson identify his race? A. Yes, he does.

Q. And at the time you received that letter, did you have any black line drivers at your terminal? A. No, sir.

Q. Are you interested in hiring blacks as line drivers? A. Yes, if and when I need additional line drivers.

Q. Do you know any reason why Mr. Stinson is not qualified to be a line driver?

Mr. Schuler: I object, Your Honor. I think there is nothing that was indicated in the questioning that would show that Mr. Stinson ever made his qualifications **[640]** known to the company.

The Court: The question is whether he knows of anything, and he can state whether he has any personal knowledge of the qualifications of Mr. Stinson or not. I'll overrule the objection.

A. (By the Witness) No, sir, I don't have any information either way.

Q. (By Mr. Fenton) All right. Now, you testified that after Mr. Stinson wrote, that he later came in, and you thought that an application was offered to Mr. Stinson, but it was your understanding that he didn't accept it.

Did you personally offer the application to Mr. Stinson at that time? A. (By the Witness) In person?

Q. Yes. A. No.

Q. Do you know who did? A. I learned later from my line driver supervisor that he had offered him an application that morning.

Q. Who was that, sir? A. Mr. Foster.

Q. You personally did not offer him the application, is that correct? A. Only twice on the telephone.

Q. And on the telephone you invited him to come in and get **[641]** one, is that correct? A. Twice, yes, sir.

Q. Now, you stated that you asked Mr. Stinson for a formal application. Aren't application blanks furnished by the company? A. That's correct.

Q. So, in other words, the company would have to give the application blank to Mr. Stinson, would it not? A. Right.

Q. Mr. Frazier, I'll hand you what has previously been marked as Plaintiff's Exhibit 6, and this is a line driver roster for your terminal as of December 30th, 1970. Do you recognize it as such? A. I have seen the list before.

Q. And do you see the last name on there, Alvin Buckley with a seniority date of 9/4/70? A. Yes, sir.

Q. Has your terminal hired any line drivers since that date? A. No, sir.

Q. Have they used any casual line drivers since that date? A. I'm sure we have.

Q. Do you have any idea how many you have used? A. No, sir.

The Court: That was November 4th, 1970?

Mr. Fenton: September 4th, Your Honor, 1970.

The Court: That is his seniority date?

Mr. Fenton: Correct. I think that's all I have.

The Court: Thank you, Mr. Fenton. Mr. Wells?

Mr. Wells: No, sir.

Mr. Schuler: Just one or two questions.

Redirect Examination

By Mr. Schuler

Q. Mr. Frazier, did you offer an application to Mr. Stinson? A. Yes, I did, on two occasions.

Q. And did he indicate that he was willing to fill one out? A. No, sir. He declined both times.

Q. On what grounds? A. Well, he stated that he considered the letter his application for employment.

Q. I'd like to show you Plaintiff's Exhibit 214, which is part of the Motor Carrier Safety Regulations, Part 391, Qualifications of Drivers, and ask you if you are familiar with the provisions of Sub-Part C, Paragraph 391.21, Application for Employment, that requires that a person shall not drive a **[643]** motor vehicle unless he has furnished the motor carrier that employs him with an application for employment that meets the requirements of Paragraph B of this section? A. Yes, sir, I am aware of that.

Q. And is that the basis for your requiring a person to fill out an application? A. It is one of the bases.

Q. All right. In the first conversation with Mr. Stinson, did you tell him that there were no openings at that time? A. I certainly did, and I told him about the change of operation that was contemplated.

Mr. Schuler: All right. Thank you. No further questions.

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[644] **DENNIS L. ANDERSON,**
called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schuler

Q. Please state your full name for the record. **[645]** A. Dennis L. Anderson.

Q. What is your business address, Mr. Anderson? A. 2598-74th Street in Lubbock.

Q. What company are you with and what position? A. T.I.M.E.-DC, Inc. I am director of transportation.

Q. How long have you been with T.I.M.E.-DC, Mr. Anderson? A. Twenty-five years last month.

Q. How long have you been director of transportation? A. Since October of 1969.

Q. As director of transportation, what are your general duties? A. Basically in charge of over-the-road transportation.

Q. Would you explain that a little bit more? What comes under that? A. Well, moving the freight across the country, the terminals. My responsibility is to get it moving after it is loaded.

Q. Would you have within your job duties any duty that relates to securing improved equipment for your company and arranging for more efficient operations to reduce the total miles you have to operate to serve the public? A. Yes. I am responsible for short-route authorities, change of operations, and somewhat in the equipment we purchase.

Q. Have you been advised generally as to the nature of this lawsuit? **[646]** A. Yes, sir.

Q. And have you been advised that there is a position here of the company that there have been reductions in miles operated and in the efficiency of equipment? A. Yes, sir.

Q. Have you made a study of certain factors that have resulted in reducing the total number of miles operated by your company? A. Yes, I have.

Mr. Fenton: Excuse me. Your second to last question, Mr. Schuler, did you say a reduction in total number of miles operated and the efficiency of the equipment?

The Court: That's what he said.

Mr. Schuler: And in the efficiency.

The Court: Reduction in the efficiency.

Mr. Schuler: No, I did not mean to say that. If I said that, I misstated.

The Court: That's what I understood it to be. Maybe we better go back over it and clear it up. I think Counsel's inquiry is well taken.

Q. (By Mr. Schuler) All right. Are you aware that there is a position that is taken by the company here that there have been efficiencies in the operations of the company based upon reducing the total miles operated in serving customers and in the efficiencies in providing newer and better equipment to **[647]** operate over more direct interstate highways? A. (By the witness) Yes, we are in certain instances here hauling more freight with fewer miles.

Q. All right. Now, you have indicated you have made a study of this. Can you tell us of any efficiencies that have resulted from new grants or authority from the Interstate Commerce Commission, which give you more direct routes? A. Yes, sir, I have several. These are alternate authorities issued by the ICC as supplements to our Master Certificate.

Sub 81 in March of 1965 was a route between Atlanta and El Paso. Previously we had to run our freight to Atlanta to Nashville, Oklahoma City, Lubbock and El Paso. This gave us a direct route through Dallas. It saves 421 miles per round trip, and based on the number of schedules we ran in 1971, eleven hundred ten schedules, and the saving would have been approximately four hundred sixty-seven thousand miles on this route.

Q. Mr. Anderson, the reporter has to take this down and you are giving a lot of figures, so would you please slow down just a little bit so the reporter can get it.

The Court: Let me ask, you are not entitled to serve anything intermediately between Atlanta and El Paso when you go through?

A. (By the witness) This is a closed-door authority, that's **[648]** right. We have a terminal at Dallas, but on this route we cannot serve it.

The Court: You just load the truck at Atlanta and go straight through and don't pick up or deliver.

A. (By the witness) That's right.

Mr. Schuler: Your Honor, that's true on this particular operation, but generally a carrier such as this is authorized to serve all intermediate points.

The Court: But on this one particularly, I thought that was what he was talking about. I wanted to make sure.

Mr. Schuler: That's right.

Q. (By Mr. Schuler) Please continue. A. (By the witness) Sub 78, September, 1966, gave us a direct authority between Kansas City and St. Louis. Prior to this we had to run our freight from Kansas City to Springfield to St. Louis, south and back north again. This amounts to a saving of a hundred and thirty miles each round trip. In 1971 we ran twelve hundred

twenty-six schedules across this route with an approximate saving of a hundred and fifty-nine thousand miles.

Sub 86 in September of 1966 between Oklahoma City and Phoenix is another sleeper route. Prior to this change we had to run our freight again from Oklahoma City through Lubbock, to El Paso to Phoenix. Now, we run direct over the Highway 66, **[649]** drop down through here and it's a saving of two hundred and eighty-eight miles round trip. We ran twelve hundred eighty-six runs over this route in 1971 for an approximate saving of three hundred seventy-thousand miles.

Sub 89, March, 1967, between Chicago and St. Louis. Prior to the change, prior to the authority, we had to run our freight from Chicago to Evansville, back to St. Louis, or to Chicago, Evansville, to Memphis, to Oklahoma City, and this gave us a direct route from Chicago to St. Louis, three hundred and forty-six round-trip miles saved. We ran fourteen hundred ninety-four schedules over this route in 1971, with approximately five hundred seventeen thousand miles saved.

Sub 96 in July of 1968 between Atlanta and Memphis. Prior to the authority we had to run our freight again from Atlanta, Nashville, to Memphis. This runs direct through Alabama, Mississippi for a hundred and twenty-six miles saved each round trip. In 1971 we ran twenty-two hundred ninety-nine schedules over this route for an approximate saving of two hundred ninety-thousand miles.

Q. Now, would you stop right there, Mr. Anderson, and add up approximately, if you will, the savings in mileage in 1971 from those five changes of operations resulting from Interstate Commerce Commission approval of alternate routes. A. Okay. I'll have to add them up with a pencil. I can't do it in my head. **[650]** Approximately a million eight hundred four thousand miles.

Q. Are there some other changes that you can summarize briefly for us resulting from ICC approvals? A. Yes. We have

Sub 118, November, 1970, between Oklahoma City and San Francisco, and we haven't obtained the change of operation to actually put this one in effect yet, but this gives us a hundred and seventy miles round trip on each schedule saving.

Sub 119, January, 1971, between Denver and Portland. Prior to the authority, we had to run our freight from Denver to Seattle and back south to Portland. This gives us a direct route. We have five hundred and twenty-four mile round trip saving. We ran a thousand seventy-one schedules over that route in 1971 for another five hundred sixty-one thousand miles saved.

Sub 121, June, 1971, between Denver and San Leandro. Again, we have not obtained a change of operations to put this one in effect, but the mileage saving will be four hundred ninety-six miles approximately each round trip when we do put it into effect.

Q. Now, have there been other changes of operations resulting from things, other matters than ICC approval of alternates? A. Yes, sir. We have several changes of authority or change of operations, change of operations over presently **[651]** existing authorities. The first one major proportion was in July, 1967, we had a sleeper operation between Oklahoma City and Los Angeles and they were running twenty-four schedules a week, four a day, six days a week, and in July of 1967 we added schedules to run six a day seven days a week. In other words, forty-two schedules a week. The additional schedules in 1971 would have amounted there to two hundred ninety thousand miles saved. It is a three hundred and ten mile round trip saving.

Again, prior to putting these into effect, the freight had to come down through Lubbock, El Paso, Phoenix and Los Angeles. This is over the old Highway 66 operation, direct across.

In August, 1966, we obtained a change of operations between Nashville and Memphis. Prior to the interstate opening

there, it was too far to turn all the way, Nashville through Memphis and back and we had drivers from both ends going out and meeting in the middle at Huntington, Tennessee. This change allowed us to run from Nashville and Memphis, return to Nashville. Each schedule was pulled by one driver.

Q. Now, as I understand that change, you started utilizing an interstate highway. A. Correct.

Q. Which saved you some miles there, is that correct? A. Yes.

[652] Q. You also switched from a two-driver operation to a one driver operation? A. Right, one driver per schedule.

Q. All right. Continue, please. A. In April, 1968, we made a similar change between Winchester, Virginia and Philadelphia. Prior to the change the driver would run through Winchester to Philadelphia and go to bed. There was too many hours. He couldn't turn it. New highways—I'm not sure, I don't believe they were interstates over there, just improved highways, allowed us to turn from Winchester to Philadelphia and back to Winchester, so the driver can now make five trips a week instead of two and a half or three that he was making prior to the change.

In April, 1968, we changed our entire operation between Winchester, Virginia and Nashville, Tennessee. Prior to this time we had layover points where the driver would go to bed at Bristol, Virginia, Chattanooga, Tennessee, Nashville and Winchester. We have one layover point at Knoxville, Tennessee now. Of course, the elimination of layover points results in a decrease of numbers of drivers needed to handle that movement of the freight.

In April of 1968, Chicago to the East Coast, including all the intermediate terminals, Cleveland, Buffalo, Albany, so forth, was changed from a single trailer operation to a double forty operation.

[653] Q. What do you mean by double forty operation? A. Pull two trailers with one tractor, two forty trailers with one tractor. Through this area we pull short doubles. The forty doubles are allowed only on the turnpikes, the Indiana Toll Road, the Ohio Turnpike, New York Throughway and Massachusetts Turnpike. So of course, now, we are in effect reducing the drivers by approximately half by pulling twice as many trailers with one tractor.

In September, 1969, probably the most important change of all was our T.I.M.E.-DC change of operation as a result of the merger, and this gave us the right to intermix the freight from the three companies at all points where we had more than one terminal and run it then in one trailer and over the shortest authorized route, and I have no estimate on miles there saving, but it was a major change.

Of course, prior to the change of operations, well, we had to run the freight exactly as it was prior to the merger. The old T.I.M.E. Freight from Boston to Los Angeles ran through Winchester, Virginia over to Nashville, and the L.A. freight from the Boston terminal of the DC operation ran through Chicago. We took the shortest route after this change and put all the freight over the shortest route, and in January of 1972, back to Chicago, the East Coast again, the one I just described as changing to a double forty operation in 1968, in January of '72 we changed that from a sleeper operation to a **[654]** single man operation, so we are still running double forty equipment, and we are now pulling with one driver instead of two drivers in each tractor.

And in February of 1972 we changed the entire West Coast north-south operation, which prior to the change was approximately 50-50 sleepers, fifty percent sleepers and fifty percent single man, and it's now a hundred percent single man operation, and again using one man per tractor instead of two.

And in the same change of operation, February, 1972, we changed our operations between Phoenix and El Paso and Lubbock. Prior to that time we had a layover at Lordsburg, and at El Paso, Texas, and we eliminated both layover points. We now meet in the middle. There is no layover involved, which in effect, reduces the need for drivers.

Q. All right. Have there been changes of a miscellaneous nature that have resulted in reduction of miles operated? A. Yes, sir. In February—excuse me. In August of 1971, they operated a little piece of interstate over in Utah and made an authority we already had and had operated in the past between Denver and Los Angeles a practical route. Prior to that there were mountains and things and we just didn't feel it was safe to run the route. We started running that route and it saves us a hundred and fifty-nine miles round trip. We ran eight hundred seventy schedules over that route in 1971, which would amount to a hundred and thirty-eight thousand miles **[655]** on that particular route.

In early 1971 we changed Kansas City—Dallas, Kansas City and Oklahoma City. Schedules prior to the change, a Tulsa driver and a Kansas City driver would run at the same time and meet at Chanute, Kansas, and the Oklahoma City would end in Tulsa, and Tulsa put on another driver to run it to Oklahoma City, or to run it to Dallas. After the change we started meeting at Coffeyville, Kansas. The Kansas City driver ran a little further. The Tulsa driver now runs and meets at Coffeyville and instead of going back to Tulsa he goes to Dallas, and eliminates one driver in each schedule is what I'm trying to say.

Q. All right. Are there any others? Have you had any in the past few months? A. No. That would be the last one with the—we had two major changes I have already described this year.

Q. Now, have you made any tabulations as of March of this years as to the total miles operated by sleeper operations compared to single man operations to show the reduction in sleeper operations? A. Yes, sir. I compared March miles as they ran

compared with how they would have been—the miles we would have had sleeper versus single man had we not made the changes I have already described. This year from Chicago east and the West Coast operation we decreased the sleeper miles by a million **[656]** three hundred forty-five thousand miles in one month by those two changes.

Q. And it was on just the two long runs, I believe you said. Which runs were those? A. Chicago to the East Coast, Boston, New York and the Los Angeles to Seattle on the West Coast.

Q. Is there any way you have of estimating the decrease in man hours, or the decrease in total drivers used during that one-month period? A. No, sir, I didn't make any survey on that at all. I get involved in drivers only during a change of operations when we decide how many we should move to different points.

Q. Now, you have given us these various types of changes that have occurred from 1965 to the present due to ICC grants, due to internal changes of operations, putting in relay operations instead of two-men sleeper operations. Has this had the effect of reducing the total number of road drivers used, or increasing the total number of road drivers used? A. Well, it would decrease the number of drivers used for the same amount of freight. Now, I didn't—again, didn't make any survey as to how we compare tonnage-wise now with the past, but for the same amount of freight we are certainly using fewer drivers than we would have prior to the changes.

Q. Have you made a similar study as to the equipment used by your company from 1967 to the present? **[657]** A. Yes, I have.

Q. Would you tell us what you found? A. Of course, the trend in the equipment over the years is lighter trailers, higher cubes and fewer double schedules—I mean more double schedules and fewer single.

Q. When you say higher cubes, are you talking about cubic footage? A. Cubic capacity of trailer, loading capacity, right. I

made a couple of notes here of some 1964 trailers we still have on our fleet. Well, first of all, in 1967 we had some twenty-four-foot trailers, a hundred and eighty nine twenty-four-foot trailers still on the fleet. Now, of course, we have no twenty-four foot trailers at all. In 1964, short double or pup, as we call them, one series we still have in our fleet, has seventeen hundred twenty cubic feet of loading capacity, and it weighs approximately seventy-two hundred forty pounds, and the 1971 model has nineteen hundred forty-six cubic feet, over two hundred more, weighs only fifty-nine hundred pounds, so the trailers are getting bigger and lighter.

Q. When you stated a short double, does that mean two trailers that are hauled together behind a tractor? A. Yes, sir.

Q. And you refer to either of the shorter trailers as a pup? A. Right.

[658] Q. All right. A. And they are still restricted in the south, but we can run them all the way from Los Angeles to Chicago without restriction, and from Chicago east over the turnpikes.

I made a similar note on the forty-foot trailer, a 1962 model, forty-foot trailer still in the fleet, twenty-four hundred fifty-four cubic feet of loading capacity, eleven thousand three hundred twenty pounds, and a 1971 forty-five foot trailer, which we are now running, five-foot longer, three thousand seventy-nine cubic feet, weighs only ten thousand four hundred twenty-five pounds. Almost a thousand pounds lighter, approximately, and four hundred additional cubic foot loading capacity.

As far as the number of trailers in the fleet, in December, 1967, T.I.M.E. Freight—I don't have the combined list for this date, but we had fourteen hundred twenty-one schedules of line equipment, six percent of those were doubles schedules, and at the time of the merger in December, 1967, we had twenty-eight hundred forty-six schedules of equipment, sixteen, approximately sixteen percent of them were doubles schedules.

In the present fleet we have three thousand eighty-eight schedules of equipment, and twenty-two and a half percent of those are doubles schedules, and we have on order now, our fleet will change this year, we will retain three thousand **[659]** eighty-eight schedules of equipment, but our schedules of doubles will increase to thirty-one percent. So since 1967, six percent and now thirty-one percent on the doubles schedules. Of course, the cube is—I don't have the note of the cube, but terrific increase in cube.

Q. Again, I would ask you if the increase in the use of double trailers hooked together and the increase in the capacity of those trailers, and a reduction in the weight of those trailers results ultimately in a usage of more or less drivers to handle the freight? A. Definitely fewer drivers to move the same amount of freight.

Mr. Schuler: Thank you. I have no further questions.

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[661] STEPHEN SYDEBOTHAM,

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified **[662]** as follows:

Direct Examination

By Mr. Hunter

Q. Would you please state your name for the record? A. Stephen Sydebotham.

Q. What is your current business address? A. Post Office Box 2550, Lubbock, Texas.

Q. Who is your current employer? A. T.I.M.E.-DC, incorporated.

Q. What is your present position with T.I.M.E.-DC? A. Director of Claims and Safety.

Q. What are the duties encompassed with the position of Director of Claims and Safety? A. Well, in my position with the company, we have to direct the activities of field personnel as well as the drivers in the manner of training, advice, and counseling, as well as through our personnel department, the minimum requirements by the regulatory bodies, and the Department of Transportation, of employment and so forth.

Q. What role does your department play in the screening of applicants for road driver positions? A. Well, after the personnel employment folder is received and all the papers are submitted, they are given further screening about our department for physical qualifications and make certain that all the requirements of the Department of **[663]** Transportation are met.

Q. I see. As Director of Claims and Safety, do you have personal knowledge as to the performance of T.I.M.E.-DC in the area of accident prevention? A. Yes, I do.

Q. What is the nature of that knowledge? A. In 1968 at the National Safety Truck Contest, our predecessor, or DC International, won first place in this contest, and T.I.M.E. Freight won second place.

Q. What is the criteria used to establish the various positions in this contest? A. It is established by the number of miles driven and the number of accidents related to a million miles driven.

Q. I see. What occurred after 1968? A. In 1969, under the merged company, T.I.M.E.-DC, Incorporated won first place in this category, which is in excess of one hundred million miles driven.

I might add that this encompasses such motor carriers as Roadway Express, PIE, Transcon, Yellow Freight, etc.

Q. Are these the largest carriers in the industry, is that correct? A. Yes, that's correct.

Q. Do you remember the performance of T.I.M.E.-DC that year in terms of—— A. I believe that was 2.5.

[664] Q. What happened the following year? A. In 1971?

Q. 1970, I believe. A. 1970 we won first place that year.

Q. Do you know your frequency that year? A. 2.6.

Q. 1971. A. We won first place again.

Q. I see. To the best of your knowledge, has any carrier in that category ever succeeded in winning three years in a row? A. Not to the best of my knowledge, no, sir.

Q. As director of claims and safety, do you have any personal knowledge as to the relative performance of city drivers transferring to the road? A. Yes, I do.

Q. I submit to you a document which was earlier identified as Defendant's Exhibit LLL. Are you familiar with that docket? A. Yes, I am.

Q. In what manner are you familiar with that document? A. This was constructed under my direction as to the activities of what had transpired at Memphis, Tennessee.

Q. Okay. What was the occasion for that Memphis study? A. Well, we had noted that we had a number of accidents we couldn't really account for, so a study was conducted, but in **[665]** April of 1969, city drivers, with the agreement with the local union, and T.I.M.E.-DC, reached an agreement that they would be permitted to exercise the option and drive over the road.

Q. This had not happened before? A. No, sir.

Q. What happened in 1969? A. The year 1969 we had a total accident of Memphis-based drivers of twenty-eight.

Q. Are these line haul? A. Yes, this is over-the-road line haul accidents. Of this, twelve of fifteen people which were the city driver transferees, contributed of the twenty-eight and the regular line haul drivers contributed sixteen of the accidents, of which they were seventy-seven.

The Court: There were fifteen transferees, is that correct?

A. (By the witness) Yes, sir, that's correct.

Q. (By Mr. Hunter) This is from—— A. (By the witness) That is from April.

Q. The total number of accidents in 1969 are from January to December? A. That is correct for the entire year.

Q. When did the city drivers transfer to the road? A. April of 1969.

Q. I see. Now, what happened in 1970? **[666]** A. In 1970 we had a total line haul accident of thirty-three. The city driver transferees got twenty-four of the thirty-three. They comprised twenty-five of the list of over-the-road drivers, or regular drivers contributed nine of the accidents, of which there were eighty-three.

Q. I see. In 1971? A. We had a total line haul accident of twenty-four, city transferees contributed ten of the twenty-four, of which there were thirty-two of the city drivers at that time, regular drivers contributed fourteen of a number of seventy-six.

The Court: That is seventy-six regular drivers?

A. (By the witness) That is correct, sir.

The Court: Thirty-two are the transferees?

A. (By the witness) That's correct.

The Court: Would that be the same person or were there thirty-two different persons? Could that be one man transferring thirty-two times or a combination of it?

A. (By the witness) No. This was a total number of transferees. Obviously, Your Honor, all of the drivers did not have accidents, but——

The Court: All of them did not have what?

A. (By the witness) Accidents is what I'm saying, but they did contribute that total number.

The Court: Develop, Counsel, how they **[667]** transferred. Was it just for one trip or did they transfer permanently?

Q. (By Mr. Hunter) Mr. Sydebotham, advise the Court as to the method by which transfers were accomplished in Memphis. A. (By the witness) Through the local agreement they were allowed to actually sign a resignation, but still keeping their company seniority, and then they were allowed to then bid on any open over-the-road driving, and that's how it was accomplished.

The Court: Well, when they bid, what seniority date did they have?

A. (By the witness) I can't personally answer that.

Mr. Wells: If Your Honor please, there is a stipulation about that. They maintained their company seniority for the purposes of vacations and pensions and fringe benefits. They obtained their seniority in the road unit as of the dates of the entry into the road unit.

The Court: The date they got their first job?

Mr. Wells: Yes, sir, in the road unit.

Mr. Hunter: Again, Your Honor, to make it perfectly clear. These transferees refer to city drivers who were allowed to transfer to regular full-time road driver positions.

The Court: They went over to full time.

[668] Mr. Hunter: That's right. They were not casuals.

The Court: Under the method Mr. Wells just described.

Mr. Wells: Right. They became regular line haul drivers.

The Court: All right. Well, does that mean when a man would transfer, did you have a total of a hundred and eight drivers on line in 1971 out of Memphis?

A. (By the witness) Yes, sir, that's correct.

The Court: A hundred and eight?

A. (By the witness) Yes, sir.

The Court: Thirty-two of them were transferees to a regular position out of the city and seventy-six were already there, or came in by new employees.

A. (By the witness) Yes, sir, that's correct.

Mr. Hunter: I have no further questions at this time.

Cross-Examination

By Mr. Fenton

Q. Mr. Sydebotham, you have Defendants' Exhibit LLL before you? A. Yes, sir, I do.

Q. Was this exhibit actually put together by you, or by **[669]** someone else? A. By the manager of safety and by the manager of personnel under my direction.

Q. That is by someone else, is that correct? A. That is correct.

Q. Does this exhibit show the kind of accidents that these individuals were involved in? A. No, it does not.

Q. Does it show whether individual drivers were responsible for these accidents? A. No, it does not.

Q. Does it show whether the accidents were chargeable or non-chargeable? A. It does not.

Q. Does it include both, or do you know? A. Yes, sir, it is all inclusive.

Q. Does it show the amount of property damage which was involved in these accidents? A. No, sir.

Q. Does it show the accidents which each individual driver was involved in? A. No, sir.

Q. Now, you have grouped, I take it, all of your regular line drivers in Memphis into this summary, is that correct? A. That's correct.

[670] Q. For the years shown. A. Yes.

Q. Did you do any breakdown to determine whether or not line drivers who just started their employment with the company were involved in any more accidents than those that had worked there, say, five years, or longer? A. No, sir, I did not.

Q. It is true, of course, that the transferring city drivers were beginning their line driver employment, isn't it? A. Yes, sir.

The Court: That brings up this question: You had twelve transferees in 1969. Those twelve will be in the eighty-three for 1970, would they not, or would they be in the twenty-four transferees?

A. (By the witness) No, they are still——

Mr. Schuler: Your Honor, pardon me, but I believe you have transposed one of the columns.

The Court: Yes, sir. I'm talking about fifteen. You got fifteen transferees. What do you do in 1969? Where are they carried in the 1970 figure?

A. (By the witness) They are still carried as a city driver transferee.

Q. (By Mr. Fenton) Now, are you aware, Mr. Sydebotham, that many more white city drivers transferred to the road than of black in Memphis, and let me ask you if this figure **[671]** sounds approximately correct to you, and this is compiled from Plaintiff's Exhibit 171, that as of the date of that seniority

roster, June 30th, 1971, that twenty-eight whites and three blacks had transferred from the city to the road.

Mr. Schuler: Your Honor, I don't think the foundation for that question is accurate. This exhibit does not show that more whites transferred to the road than blacks.

The Court: Well, I think he was referring to another exhibit, were you not?

Mr. Fenton: I am referring to Exhibit 171.

Mr. Schuler: Also, this witness does not have knowledge of that other exhibit.

The Court: Is this other exhibit in evidence? If it is, show it to him and see if he can answer the question on the basis of the information contained therein.

Do you have any study made of what the transferees do in their second year of road haul work?

A. (By the witness) I do not have it broken down. However, we could obtain it. We do have all the records.

Q. (By Mr. Fenton) Referring again to Exhibit LLL, do you know the race of the individual drivers involved in that exhibit? A. (By the witness) No, sir, I don't.

[672] Q. All right. I now hand you what has been marked earlier as Plaintiff's Exhibit 171, Mr. Sydebotham, and refer you to the line driver seniority roster in this exhibit, which starts about midway in the exhibit and is dated June 24th, 1971, and starting with the person who holds Number 75 on that roster, Mr. Wilbanks, do you see that? A. Yes, I do.

Q. Now, from that point on——

The Court: From that point on, you mean subsequent to that date or before that date, now?

Mr. Fenton: Starting with Mr. Wilbanks, from that point on, there are a number of road drivers who have a different

seniority date listed for vacation purposes than they have for their line drivers seniority date.

Q. (By Mr. Fenton) Is that correct, Mr. Sydebotham? A. (By the witness) Yes.

Q. Are you aware that all of those that have those two different dates are transferees from the city to the road? A. I would just have to presume as such.

Q. All right. Assuming that that is true, now, can you go through and count them or you can accept my statistics. I count a total of twenty-eight whites and three blacks who have so transferred. Perhaps you could glance through there and see if you agree with those statistics. A. Well, I would have no knowledge whether they are white **[673]** or black.

Q. The N indicated black, Mr. Sydebotham. A. Yes, sir. I will agree with your statistics.

Q. All right. So we agree, do we not, that many more whites have transferred from the city to the road there than have blacks. A. Yes, sir.

Q. Now, did you do any breakdown to determine who were involved in the most accidents, the whites or the blacks? A. No, sir.

Q. Of the transferees? A. No, sir.

Q. Mr. Sydebotham, are you aware that at other terminals of the company that city drivers have transferred to the line? A. I do not have such knowledge. This is the only one that I am aware of.

Q. Well, the record shows that this has taken place at the Los Angeles terminal and it has also taken place at least in two instances at the Denver terminal. Have you done any statistical analyses of those transfers?

Mr. Schuler: Your Honor, the foundation is that he has such knowledge. He has already said he doesn't have knowledge.

The Court: Would this mean you haven't made such a study? **[674]** A. (By the witness) I have not made such a study.

The Court: All right.

Mr. Fenton: That's all.

Mr. Wells: No questions.

Mr. Hunter: A couple of questions, Your Honor.

Redirect Examination

By Mr. Hunter

Q. Again, referring, Mr. Sydebotham, to Exhibit LLL. A. Yes.

Q. The severity of the accident is not noted, is that correct? A. That is correct.

Q. That's with regard both to line drivers and city drivers, is that correct? A. That is correct.

Q. Now, whether an accident is chargeable or non-chargeable, is the company responsible for any of the resulting costs? A. In most cases, yes.

Q. So the probable liability of the company has no relationship to whether the driver is charged or not charged for the accident, is that correct? A. Well, that's true to a fashion. On a non-chargeable, **[675]** if somebody else—if it's a clear cut case of liability, there is a possibility of recovery, but other than that, we still have to defray the expenses.

Q. Now, when this chart was prepared under your direction, you gave no instructions as to determining the racial designations of the transferee, did you? A. No, sir.

Q. This chart was intended to illustrate the number of accidents that were caused by city drivers transferring to the road period, is that correct? A. That is correct.

Mr. Hunter: No further questions.

Recross-Examination

By Mr. Fenton

Q. Mr. Sydebotham, if the company feels that its driver is not responsible for an accident in which another party is involved, doesn't it use every effort to keep from paying any claim with respect to that accident? A. Absolutely.

Mr. Fenton: That's all I have.

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[676] CHARLES F. HUTCHINSON,

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Schuler

Q. Would you state your full name for the record? **[677]** A. Charles F. Hutchinson.

Q. What is your address, Mr. Hutchinson? A. Post Office Box 2550, Lubbock, Texas.

Q. With what company are you associated and what is your position? A. I am personnel manager with T.I.M.E.-DC.

Q. How long have you been personnel manager, Mr. Hutchinson? A. Nearly two years.

Q. And what is your background in transportation prior to the two years as personnel manager of T.I.M.E.-DC? A. They go back nearly ten years to June of '62. I guess that's ten years. I was with another motor carrier for eight years, four years of which I was payroll supervisor, a year of which I was a dock foreman-dispatcher, a year of which I was a line driver supervisor and safety supervisor, and two years of which as personnel manager.

Q. Would you tell us what the general scope of your duties is as personnel manager? A. To recommend policies in lieu of our purpose of maintaining the human resource and in line with government and contractural constraints; to implement them after approval and to administer them.

Q. In this regard, do you have dealings with the area or regional representatives of your company that have been previously mentioned by Mr. Wilkins, the president of the **[678]**

company? A. Yes. I have a staff relationship with the regional directors and the terminal managers, if you will.

Q. And in the time that you have been in this position, have you particularly directed your efforts in dealing with the terminals and the regional representatives of your company to the field of hiring and employment of minority applicants? A. Yes, that is my primary duty.

Q. Were you present in most or all of the deposition that have been taken in this case? A. Yes, sir, I was.

Q. Have you prepared a series of documents that have been previously identified and accepted as exhibits here, commencing with Exhibit TT? A. Yes, sir, I have.

Q. I'd like to give you a copy of Exhibit TT and before we go into that, were these exhibits all prepared by you or under your supervision? A. Yes, sir, they were.

Q. Were they all prepared from company records and from sources of statistics such as the United States Census Bureau and other sources that have been made available to the plaintiffs? A. Yes, sir.

Q. All right. Would you explain how you prepared Exhibit **[679]** TT and the purpose of it? A. Well, Exhibit TT was prepared from T.I.M.E.-DC's and its predecessor's equal employment opportunity report, the EEO-1 as it is commonly known, this report. We have used percentages and absolutes. To be statistically sound, you must do this. And these are meant to show the decrease in the total employees of T.I.M.E.-DC and its predecessor companies in 1967 through the last report, which was March of 1972, and the corresponding increase in minority, Negro and Spanish surnamed employment.

For example, in Table 1, in 1967 T.I.M.E.-DC and LASME had some seven thousand two hundred thirty-eight employees. It's decreased to, in 1972, to six thousand four hundred twenty-four.

Mr. Fenton: Excuse me. What exhibit are you referring to?

A. (By the witness) TT.

The Court: TT.

Mr. Fenton: What table?

A. (By the witness) Table 1.

Mr. Fenton: I guess I don't have that table on my exhibit.

A. (By the witness) It may be out of order.

Q. (By Mr. Schuler) Would you compare the exhibit of Mr. Fenton and tell us if he has all the pages there or not. **[680]** A. (By the witness) He has another exhibit.

Mr. Schuler: Your Honor, in our off-the-record discussion, we had lettered our exhibits approximately a month ago, and then we relettered them and I think Mr. Fenton had before him now the previously lettered TT.

The Court: All right. Does he have the one that the witness is testifying about, now?

Mr. Schuler: Well, if he doesn't have it among his other papers, we will give him a copy of it.

The Court: Well, let's see he's going to need something to follow this testimony with.

Do you have it, Mr. Wells, where he could look over your shoulder?

Mr. Wells: Yes, sir.

The Court: Why don't you step over there and follow it there. That would be the best way. I can see where you will need it to follow this testimony.

Mr. Schuler: I apologize for this, Your Honor. I think we gave the copies to Mr. Fenton, but we will make another copy available.

A. (By the witness) Okay. Table 1, total employees shows a percentage decrease of 11.2 percent. In Table 1(a), it shows an absolute decrease of eight hundred fourteen employees over this six-year span.

During that same period the total employment, minority **[681]** employment at T.I.M.E.-DC increased from five hundred twelve to six hundred seventy-seven. This is an absolute employee increase of a hundred and sixty-five employees.

Negro employment increased from two hundred forty-five to three hundred fifty-six. Percentage increase of 45.3; absolute increase of one hundred eleven.

Spanish surnamed employment from 1967 to 1972 showed a percentage increase of 16.7 and an absolute increase of thirty-eight people.

Chart 1 illustrates graphically the percentage of increase and decrease in total employment, minority group employment.

Mr. Wells: Just a moment. Where are you, now, please, sir?

A. (By the witness) Chart 1.

Mr. Wells: Chart 1?

The Court: Chart 1 and 2 just reflect what is on Table 1 and 2, do they not, except in graphic form?

A. (By the witness) Yes, sir, graphic form.

Mr. Wells: Thank you.

Q. (By Mr. Schuler) Does Chart 1 reflect the findings on Table—— A. (By the witness) Chart 1 corresponds to Table 1. Chart 1(a) corresponds to Table 1(a).

Q. All right. Would you tell us briefly the additional **[682]** information that is found on Table 1(a), or have you already given that? A. I have already given that.

Q. All right. So that by looking at the charts, you can tell the graphic relation of the figures that you have just told us about. A. Yes, sir.

Q. Now, in this regard, were you present yesterday when Mr. Wilkins indicated that since the mergers there had been a decline in gross revenue and in profits? A. Yes, sir.

Q. And were you present also when he indicated that it is not only a hope but a requirement that the company increase its business in the future. A. Yes, sir. He has expressed that requirement.

Q. Now, relating that to the number of employees, what is your expectation as to whether in the future the total number of employees of the company will increase or decrease? A. Well, if you will note on there, our sharp decline in total employment has leveled off in 1970. I believe this will correspond to our revenues, and we can expect as our revenues increase, and as they are required to increase, that our employment will also increase.

Q. What is your position as personnel manager as to whether in the future there will be a continued increase in the hiring **[683]** of minority employees, as there has been in the past? A. As personnel manager, I will be assured of it.

The Court: You would be——

A. (By the witness) Assured that it will be an increase, yes, sir.

Q. (By Mr. Schuler) Now, we refer to Exhibit UU, and tell us how you prepared it and what it is designed to show. A. (By the witness) This shows basically the same information as the first. A percentage and an absolute increase in total minority group employment at the terminals where we took depositions this summer.

The Court: Same information as on the previous exhibit except it is limited to these ten terminals? A. (By the witness) Yes.

Q. (By Mr. Schuler) Is it intended to pinpoint the exact termination where the plaintiffs took depositions? A. (By the witness) As a group, yes, sir.

Q. And are the findings on that based on your statistics generally the same as on TT; that is, you have had an increase in the number of minorities, both in percentage and absolute number, and a decrease in your total personnel. A. Yes, sir. Chart 7 and 7(a) illustrates that quite graphically.

Q. All right. I'd like to refer you now to Exhibit VV, minorities as a percentage of total employees as of December 3rd, **[684]** 1971. Would you explain that chart, please? A. Well, this is first of all part of our internal controls, and a way that we check our progress, and we prepared the quarterly—of course, this is the last quarter we have prepared. The heading of the column on top shows minorities as a percent of population from the general population characteristics, 1970, from the Census Bureau, and the 1963 subreport, persons of Spanish surnamed——

The Court: Excuse me. We're talking nationwide now?

A. (By the witness) Yes, sir, yes, sir.

Mr. Wells: If Your Honor please, I didn't hear which exhibit we are on, now.

Mr. Schuler: We are on VV.

The Court: VV as in Victor.

Mr. Wells: Thank you.

A. (By the witness) What we did to arrive at this percentage of T.I.M.E.-DC's universe, if not the whole United States, but T.I.M.E.-DC's universe, is take the standard metropolitan statistical areas of the cities in which we do business, total population, and compute the Negro and the other minority percentages. The Spanish surnamed figures came from a 1971 Census Bureau Report, or an estimate.

Q. (By Mr. Schuler) In using the SMSA figure, and the Urban Place figure for specifically Spanish surnamed Americans, **[685]** did you do this simply for comparative purpose with the figures of the plaintiff, or did you do it because you acknowledged any correctness as to using SMSA and Urban Place figures? A. (By the witness) Well, we feel that SMSA figures should be used. There are many variables why it should be used. Depends on where our terminal might be located, where the minority community may be located. In other words, where do we draw our employees from, so the SMSA figures were used. It's not meant to be a comparison or a contrast in any way with the government's figures, but it is primarily—this is our terminal controls.

Q. Did you use the SMSA figures because they were apparently the only ones available to you? A. Yes, sir.

Q. Do you believe, or do you know whether they are correct when these other factors are taken into consideration that you've mentioned, such as distance of minority groups from the terminal? A. No, sir, I have no way of knowing whether they are correct. There are many other variables, of course, too.

Q. All right. Would you continue your explanation of Exhibit VV? A. Well, it is broken down by job class in the system, and for our three major operating regions. Also, for the—and it shows that T.I.M.E.-DC had six thousand four hundred sixty **[686]** employees at this point in time, December 31st, 1971.

Q. Let me stop you right there, Mr. Hutchinson. Mr. Wilkins gave figures yesterday that showed a slightly lesser number of employees as of 1971. Can you justify the difference in the two sets of figures? A. Yes. I believe Mr. Wilkins showed about six thousand. We show about sixty-four hundred here. The difference is Mr. Wilkins' source was the ICC financial report, and that requires that you report just those employees who are actively working at that particular point in time. Our figures here include all those employees to whom we have obligations. The

four or five hundred difference here is made up of people on layoff, people on sick leave, industrial leave, personal leave, that sort of thing.

The Court: Well, now, these figures also vary from Exhibit TT slightly. I don't think it's anything material.

A. (By the witness) TT, Your Honor, was March 31st.

Mr. Schuler: Of what year?

A. (By the witness) '72. And this was December 31, '71.

The Court: That would explain the slight difference. All right. Thank you.

A. (By the witness) Yes, sir.

Q. (By Mr. Schuler) Would you continue with your explanation of Exhibit VV, please, or have you completed it? **[687]** A. (By the witness) Well, the figures speak for themselves.

Q. All right. Let me show you a copy of——

The Court: Let me ask, before we leave that now, the minorities is the percent of the population, thirteen and three-tenths percent Negro.

A. (By the witness) Yes, sir.

The Court: That is the nation as a whole, and that was the population of the nation as a whole.

A. (By the witness) Sir, that is T.I.M.E.-DC universe, if you will. That is those cities where we do business.

The Court: It is the metropolitan area of those cities where you do business.

A. (By the witness) Yes, sir.

The Court: Not the entire——

A. (By the witness) No, sir.

The Court: All right. Thank you.

Q. (By Mr. Schuler) Would you refer to Exhibit WW—Well, before we go to that, I want to draw your attention to the figure in Exhibit VV under the system figures, and the financial figure down in the lower right-hand corner shows total minority of six hundred seventy people, and 10.4 percent of work force. A. (By the witness) Yes, sir.

Q. Is there another exhibit that shows how that percentage of work force represented by minority employees has increased over the last few years? **[688]** A. Yes, sir.

Q. Is that in a later exhibit? A. Yes, sir.

Q. Now, will you turn to Exhibit WW and explain how that varies from the previous exhibit? A. Again, this is one of our internal controls for checking our progress, and this exhibit illustrates the total hires during 1971. Let me qualify total. That is not necessarily everybody we hired, but that is everybody that we hired in 1971 that stayed with us through the end of '71, and that indicates again—the top column has the percentage of minorities in T.I.M.E.-DC's population, and the bottom figure indicates that we have hired four hundred seventy-four people this year, eighty-one of whom have been minorities, and we have hired at the rate of 16.9 percent.

Q. All right. And how does that differ from the previous exhibit? A. Well, the previous exhibit was our total number of employees as of December 31.

Q. That was at a given point in time. A. Yes, sir. These are all our hires that have stayed with us during 1971, or 1971 new hires.

Q. All right. And you have included in that exhibit new hires as to the regional areas of your company, have you not? A. Yes, sir.

[689] Q. I also see that you have added hiring figures for two additional locations, the Hammond terminal and the Lubbock general office. Will you please tell us why that was done? A.

Those were added just to make the exhibit cross foot, if you will.

The regional directors have no responsibility for the Hammond special commodities division, or the general office.

Q. The addition of those was to make the total numbers and percentages add up to the total that you have on the first page. A. Yes, sir.

Q. All right. Does Exhibit XX contain the same type of information as Exhibit WW except for casual employees? A. These are the number of casuals that we used during 1971.

Again, this is just casuals who were coded as such in the computer. If a fellow was a casual and went regular, it wouldn't be in here. If a fellow was used casual and terminated, he wouldn't be in here.

Q. Is that figure as to Hammond and Lubbock general offices in order to make the total numbers come out correctly? A. Yes, sir.

Q. Would you tell us on the system figure the total as to casuals employed and the total minority casuals employed during 1971? A. During 1971 we employed three thousand nine hundred **[690]** eighty-nine casuals, seven hundred eighty of these were minorities, which is a ratio of 19.6.

Q. Percent? A. Percent.

Q. All right. I direct your attention now to Exhibit CC, and ask you if this is also casual information for 1971 as to the ten selected terminals where the depositions were taken by the plaintiff? A. Yes, and the general office.

Q. All right. And would you tell us what the percentage of minority hiring has been at those ten selected terminals? A. We will run through this. Atlanta was 15.1 percent; Chicago 10.1; Dallas 8.5; Denver 20 percent, compared to 11.9. Los Angeles, LAX designation, if you will, 44.4 percent; Los Angeles, LOS, 9.1 percent; Memphis 14.8 percent; Nashville 11.3; Oklahoma

City 14.0; San Antonio 75 percent; San Francisco 33.9, and the general office 32.3.

Q. In at least half a dozen of those listings you apparently hired minorities at a higher rate than you would be justified by the SMSA for that community, isn't that true? A. Yes, sir, I expect that is approximately right.

Q. I now show you Exhibit ZZ and ask you if that information was secured by you from the various terminal managers in response to a request by Counsel for the plaintiff? A. Yes, it was.

[691] Q. And what is the general nature of the information in the exhibit? A. These are line driver seniority lists at certain selected terminals, as selected by the opposing counsel, and identify the terminal managers marked by the driver's name, the date and the place from where, or from which the driver came as a result of a change of operations.

Q. When the drivers came in from another place as indicated on the exhibit, do you have any way of telling what type of change of operations was involved, and which resulted in their coming into that new terminal? A. No, I don't.

Q. Could it have been in some cases bumping in under modified seniority? A. Oh, yes, yes, if that was the meaning of your question. In the southern terminals, yes, those people—it does include those modified seniority people.

Q. Can you think of any other types of changes of operations that might have been involved? A. Well, it may have been in Los Angeles where we had the three facilities, LASME, DC and T.I.M.E. They, of course, earlier merged the LASME and the LAX terminal, if you will, and now at this point in time are merging the line board of the LOS and the LAX terminal, or it may have come—I notice there are quite a few 1969 dates which would probably relate **[692]** to the big change at the time of the merger.

These people transferring in for whatever the reason would, of course, have quite an effect on that particular terminal's ability to hire drivers.

Q. To the extent that they transfer in, would this correspondingly reduce the number of openings for new hires? A. Yes, it would.

Q. All right. Thank you. Now, I'll show you a copy of what has been identified as Exhibit AAA, and I will ask you if these are copies of correspondence that have come to your general office in the ordinary course of business. A. Yes. These were from the predecessor and T.I.M.E.-DC company files. I compiled these when I arrived, of course, here some two years ago, and it is part of an audit, if you will, or of necessity to do my duties of the equal opportunity employment program at T.I.M.E.-DC, and these consist of primarily copies of letters to minority referral sources.

Q. Who would have written the letters to the minority referral sources? A. The terminal managers generally.

Also, copies of correspondence with the contract compliance officer, who we saw several of earlier.

Q. Let me specifically direct your attention to the location of Nashville, Tennessee, and I'll ask you if there are examples of correspondence between Mr. Erskin Lytle, the contract **[693]** compliance examiner, and terminal officials at your Nashville terminal. A. Yes, there are.

The Court: Where is that in this book?

Mr. Schuler: That is about two-thirds of the way through the book, Your Honor.

A. (By the witness) I think they are in alphabetical order.

The Court: I've got it.

Q. (By Mr. Schuler) Are there also examples under Nashville of letters that have been written by your terminal people

there to various minority referral sources in that area? A. (By the witness) Yes, that is those under that tab.

Q. There was also a witness from the Atlanta office of the contract compliance office, and I would like you to refer to Exhibit AA and direct your attention specifically as to correspondence from Miss Frances Gaston to the company under date of June 2nd, 1970. A. Yes, that is this letter here, sir.

Q. Are there also letters under the section of Atlanta showing contacts with minority referral sources? A. Yes, that's all of these.

Q. About how many such letters do you see there? A. Oh, twenty-five or thirty.

Q. The next exhibit, Exhibit BBB, did you provide some of **[694]** the underlying material for Professor George in the computations of his charts? A. Yes, I did. I provided much the same material that we have entered here as to the total employment at various facilities, minority employment at various facilities, hiring results at various facilities.

Q. All right. The next exhibit is Exhibit CCC. A. Yes. This goes back to an earlier point. This is Table 3 under here. When you asked how we actually—how the progress has been made since 1967 to 1972, or one there, of our 10.4 total minority percentage in 1967, T.I.M.E.-DC had employed seven —T.I.M.E.DC or its predecessor had employed 7.1 percent minority employment and has increased through the stages, as you can see here, until the 1972 level of 10.5 percent.

Q. How about the—— A. Negroes have gone from 3.4 to 5.5 percent. Spanish surnamed, 3.1 percent to 4.1 percent.

Q. I'll show you Exhibit DDD, and ask you if this has similar information, specifically for the five southwestern states where T.I.M.E.-DC has terminals.

The Court: What are you referring to?

A. (By the witness) The five southwestern states are California,—in this particular report, California, Texas, New Mexico, Colorado and Arizona.

[695] The Court: All right.

A. (By the witness) The reason we chose the five southwestern states, it is the only area in which there are any real definitive statistics available for Spanish surnamed employment from the Spanish surnamed population.

This comes from the Census Bureau, of course, of only 1960 figures. That's part of the problem with comparative statistics.

Q. (By Mr. Schuler) And in that particular area, what has been the percentage increase in your minority employment over the five-year period? A. (By the witness) In 1967 the total minority employment was thirteen percent. In 1972 it increased to 17.7 percent Negro from 5.1 percent to 7.3 percent and Spanish surnamed from 7.2 percent to 9.2 percent.

Q. Have you prepared a slightly different exhibit based upon the terminal facilities in the five southwestern states? A. Yes.

Q. Is that Exhibit EEE? A. Yes. This is essentially the same information, breaks it down by state, if you will. The Table 2, the first page in the Exhibit, is the total population, and the total Spanish surnamed population in those cities in those states where T.I.M.E.-DC has facilities.

The second page, Table 2(a), is a comparison then of **[696]** those percentages from that first page to the Spanish surnamed employed at T.I.M.E.-DC. In other words, in our particular universe, in the fifth column there are 9.9 percent Spanish surnamed of that population and we have employed 9.1 percent.

Q. And in the fifth column would you tell us what the variatons in the percentages, from the lowest to the highest, for those five states. A. From 4.1 percent to 13.2 percent—18.6 percent, pardon me. It's a little far away.

Q. On the second page of that, have you shown by your figures the relationship between the hiring of T.I.M.E.-DC and the available census figures as to the amount of minorities in a particular state? A. Yes. That is the fifth column, the difference column.

Q. And what does it mean when some of the figures there are in brackets? A. In brackets means that in that particular location, or that particular state, we have fewer than the—fewer employees than the Spanish surnamed population.

Q. Well, conversely, does that mean that—I'm not sure I understand that. Explain that again. if you will. A. Okay. In Arizona there 13.2 percent of the population Spanish surnamed. We have employed 4.7 percent. This means we are under that particular state's population by 8.5 percent.

California, the largest state, you will see the total **[697]** population of California is twelve million, which is about three times as great as the other four states put together. We have an excess of 3.3 percent over the California population.

Q. And in the total figures, how much? A. Eight-tenths of a percent.

Q. You are eight-tenths of a percent under what would be expected in that area. A. In those five southwestern states.

Q. All right. Thank you.

Exhibit FFF is one that I will hand to you, and ask you how that shows a different picture as to the utilization of minorities in the southwestern states, and I will ask you to also tell us why you only have four states there and you have five in the other? A. Okay. In New Mexico we have four employees, and it is not a statistically——

The Court: How many employees?

A. (By the witness) Four employees. So it is not really worth the effort to compare a progress there. But in Arizona, now,

this shows the percentage of Spanish surnamed in our employment. It shows how it grew from 1967 to 1972. For instance, in Arizona in 1967 we had no minority employees. In 1972 we had 14.6 percent.

The Court: In 1972, you're talking about March 31st?

[698] A. (By the witness) Yes, sir, March 31st.

California from 17.6 to 21.4; Texas, 13.2 to 17.7.

This would probably explain—you notice the largest difference on the previous exhibit was in Arizona where we were 8.5 percent below the expected, if you would call it that. Considering the start in 1967 of zero, that is very good progress.

Q. (By Mr. Schuler) And you have shown these same figures for all minorities as well as breaking it down by Negroes and Spanish surnamed Americans. A. (By the witness) Yes, sir.

Mr. Schuler: All right. Now, the next three exhibits were marked as GGG, HHH and III. Those are the subjects, Your Honor, of a stipulation that they are admissible as to their authenticity and accuracy, and I don't wish to get into those at this time. They do not relate to this witness.

The Court: All right, sir. Does Counsel intend to offer them later?

Mr. Schuler: Yes, I do.

Mr. Fenton: Okay. I'll wait. I will save my objection.

Q. (By Mr. Schuler) The next exhibit was JJJ, which was introduced by Mr. Henry.

The next exhibit is KKK. Was this exhibit prepared by **[699]** you in the nature of rebuttal to the exhibits prepared by the plaintiff? A. (By the witness) Yes, it was.

Mr. Schuler: That exhibit has been marked, Your Honor, and I believe you have a copy of it.

Q. (By Mr. Schuler) Would you explain——

Mr. Wells: May we go off the record just a moment, Your Honor?

The Court: Yes, sir.

(Discussion off the record between Court and Counsel.)

The Court: All right. We're on JJJ.

Mr. Schuler: Your Honor, that one had been identified by Mr. Henry.

The Court: Yes, sir.

Mr. Schuler: I indicated we have nothing from this witness on that.

The Court: I thought you were going to question this witness about it.

Mr. Schuler: No. The next exhibit we are going to question him on is KKK.

The Court: All right. I've got that up here.

Q. (By Mr. Schuler) Mr. Hutchinson, was that prepared in rebuttal to Exhibit 230 of the plaintiff? A. (By the witness) Yes, it was.

[700] Q. Would you explain what part of the 230 you felt needed rebuttal and how you went about preparing the figures in Exhibit KKK. A. Two thirty, for what purpose, I don't know, but it purports to show the large hourly earnings difference between a foreman or supervisor and a union worker. In 230 the government made one small mistake to start with. They assumed that we were paid twice weekly, and used eighty hours as a basis of computing the foreman's hourly wage. It is actually—we are paid semi-monthly, and on that basis you use 86.6 hours, which reduces it somewhat. So we can follow through the exhibit, the last column is taken from plaintiff's Exhibit 230. The next column to that to the left is the corrected rate for the semi-monthly pay period rate.

Now, they assumed also that foremen and supervisors and everybody else in our business works strictly forty hours. We don't. So you have to, in turn, to get a real valid comparison, reduce it to an effective hourly rate.

From our company records, our cost control report, I believe that's the title, computed the over—or took the overtime ratio of particular job classes, dock, city drivers and office, had worked during the month of March. These are actual ratios, actual hours worked, and of course, they are referring to March 31, also, and then applied that to the union rate and got a total—yes, on the second page, got a total **[701]** average monthly income based on those overtime hours actually worked. For instance, on Chicago, dock, the average dock worker, based on those ratios, made $818.00. In Denver he made nine hundred ninety-seven. In Los Angeles nine hundred sixty-seven and the other Los Angeles facility, nine hundred and eighty-seven, compared there then to the foreman and supervisors' average monthly income.

We then computed, assuming that the dock foreman and the city driver supervisor and office manager will by necessity work the same hours as the dock men, city drivers or office personnel, we used those same hours then to compute his effective hourly rate. In other words, in Chicago, on the third page, a dock foreman made an average weekly wage of $215.93. The union people worked 41.2 hours, and we will assume that he did. That makes his effective hourly rate then $5.24. We went through the whole works this way.

And the second and the third column then accurately compare a union worker and a foreman or supervisor's effective hourly rate. For example, under dock, the union worker's effective hourly rate in Chicago was $4.58 and the foreman's rate, effective hourly rate is $5.24 an hour.

In Denver the union worker's effective hourly rate was $5.10 an hour and the supervisor's effective hourly rate was $4.45 an hour.

Moving down to the city, in Denver the union worker's **[702]** effective hourly rate was $5.11, the supervisor's effective hourly rate was $4.69 an hour.

That's all.

Q. And throughout the exhibit, does KKK in general show that the difference between supervisory pay and the hourly rate of workers is less than what is shown on Plaintiff's Exhibit 230? A. That is unfortunately true.

Q. And in a number of instances your Exhibit KKK also shows that the effective rate of the supervisor is actually less than the hourly rated effective rate? A. That's true.

Q. Now, I would like to direct your attention to Exhibit MMM, entitled to 1971 Earnings of all Driver Employees at Selected Terminals. Was this prepared in the nature of rebuttal to a prior exhibit of the plaintiff, Number 231, comparing city drivers and line driver earnings for ten T.I.M.E.-DC terminals for 1969? A. Yes, it was.

Q. And does this purport to show a more up to date comparison for the year of 1971 for those same terminals and for your system? A. Yes, it does.

Now, this does not exclude any driver employee regardless of what he made. He may have made ten cents or he may have **[703]** made twenty thousand dollars. In any case, he is in there.

Q. I assume it also does not indicate how many hours were worked by any city employee or any line driver employee? A. No, sir.

Q. To the best of your knowledge, did the plaintiff's Exhibit 231 have any breakdown as to the number of hours worked by any city driver or any road driver? A. No, sir.

Q. There are two entries on Exhibit MMM that have brackets and an asterisk, and I believe the key indicates that in those

two instances a city driver actually earned on the average more than the road driver. A. Yes, sir. At our LOS facility, and at our San Francisco facility, the line driver—average line driver at our LOS facility actually made $5631.00 less than the city driver.

The Court: Do you doubt this, Counsel? You seem to be grinning about it quite a bit.

Mr. Herman: Well, my understanding of the union contract, they have $150.00 a week guarantee.

A. (By the witness) No, sir.

The Court: Let's bring this out. You've distracted my attention.

Mr. Herman: Excuse me.

Q. (By Mr. Schuler) To clarify the exhibit, does LAX refer to a Los Angeles terminal? **[704]** A. (By the witness) Yes, sir.

Q. LOS also refers to a Los Angeles terminal. A. Yes, sir, it does.

Q. Now, you were identified by Mr. Sydebotham as having help prepare the information on Exhibit LLL, the Memphis line haul accident summary. A. Yes.

Q. Was this prepared not only for support of his testimony, but in the nature of rebuttal to the testimony of witnesses from Dallas who indicated that there was apparently a policy preventing transfer from city drivers to the road? A. Yes, it was.

Q. To clarify LLL just a bit, under the column of—the third column of numbers of drivers, which was indicated as being the city drivers who transferred to the road for 1969, there is the figure fifteen for 1970, there is the figure twenty-five for 1971 and there is a figure thirty-two. A. Yes, those are cumulative.

Q. I want to clarify this. The fifteen drivers from 1969 appeared within the twenty-five for the next year. A. Yes, yes, yes, it did.

Q. All right. Did you also prepare a further exhibit along that same line reflecting upon the comparison of degree of qualification of a city driver transferring to the road as compared to a road driver who had prior road driving experience? **[705]** A. Yes, I did a project on that.

Q. Is that the document that is marked as Exhibit NNN? A. Yes, it is.

Q. Would you explain how you went about preparing that exhibit and the findings of the exhibit itself? A. In an effort some time ago, this year, or last year, pardon me, to find out what it really takes to make a line driver, we measured certain variables, measurable variables of best drivers and poorest drivers. Let me give you a little detail on that, if you will.

Each line driver has an accident record card maintained by Mr. Sydebotham, and it lists his entire accident and injury experience from the day one until present with us. We went through five of the largest terminals, I believe it was LAX, LOS, Winchester, Denver and Memphis, and from the little record cards selected what appeared to be those who had the very best frequency and those who had the very worst frequencies. We then reduced that selection down to one hundred of the best and one hundred of the poorest.

For example, the best drivers included many drivers with ten, fifteen, twenty, thirty years of experience with no accidents. The poorest drivers included drivers with frequencies of injuries or accidents of perhaps one a year, and included three who were killed in single-vehicle accidents.

And then, from their original applications, measured **[706]** these certain variables and included in the variables we mentioned was the years of over-the-road experience as shown on the original application when the driver was employed,

and we found that among the best drivers, those that had—well, pardon me, those drivers that had from no to under three years of road experience, there were seventeen of the best drivers that fell into that group and thirty-seven of the poorest drivers that fell into that group, and three and over years of road experience, this is not commercial driving but over-the-road experience, eighty-three of the best drivers fell in that group and, of course, sixty-three of the poorest drivers fell in that group.

So from this we might conclude that there is a very definite relationship between over-the-road experience and your predictable success or as a safe over-the-road driver.

Q. And that is measured as the time of hiring? A. As of the time of hiring, yes, sir.

Q. You were present at the depositions of the various terminal employees. I want to ask you some questions regarding the policies, procedures and standards of the company.

Do you have general policies in the general office with which you work regarding the employment of the various types of employees used by the company? A. We have our MOI. I believe it is the Manual of Instructions that's been referred to previously, which is **[707]** primarily procedural in nature. The general policies disseminated through directives and executive meetings, that sort of thing. But generally, our policies are designed to be general and allow the terminal manager the flexibility that he needs in his day-to-day operation.

Q. From your review of the company files, do you know whether the policies of the predecessor companies tended to be general in nature or specific in nature.

Mr. Fenton: Your Honor, I object to the form of that question.

The Court: What?

Mr. Fenton: It's unclear to me what the——

The Court: Yes, what——

Mr. Schuler: I will rephrase it, Your Honor.

The Court: All right. I sustain the objection.

Q. (By Mr. Schuler) From your review of the company files, were the personnel policies of the predecessor companies reduced to writing in any respect? A. (By the Witness) T.I.M.E. and DC had primarily procedural manuals. DC was a little more detailed, if you will.

We have seen in our industry as far as personnel policies and practices, and going back as far as they do at least, to '62, a loose, no procedure, no policies, to the mid-sixties when **[708]** you see a lot of tests and rigid requirements and quite definitive inflexible standards, and we now are back to the—we have digressed from that now to where we are talking on general policies to allow terminal managers flexibility to allow him to select the best qualified employee, if you will.

Q. For example, do you have a company policy as to whether or not you hire a person with a criminal record? A. No, sir.

Q. Why is that? A. You can't write a policy that would preclude hiring anybody with a criminal record. There is just no way to define what an excludable criminal case would be. Each case has to be weighed on its merits.

Q. There has been some testimony in depositions in the past that there were persons excluded based on a criminal record. What is the present policy of the company as directed to these terminals in specific regard to consideration of criminal records? A. Just exactly what I've said, that criminal records will have to be judged on their individual merit. As a matter of fact, there is a blank on our application that asks if you have ever been convicted. If a man was to say he wasn't, why, we make no formal effort to check it. It may

come out in our other background checks that we do. At that point that is application falsification and that's a different matter.

[709] Q. To what extent are your policies governed by governmental regulations? A. To a great extent.

Q. I didn't get your answer. A. Our policies are governed by legal constraints to a great degree, if you will. Also, by contractual constraints. We have to deal with the DOT, driver qualification——

Q. What is the DOT? A. Department of Transportation.

Q. All right. A. The Title 7 regulations, the executive order, the wage and hour people, Mr. Wells' contracts, any number of things.

Q. Do the governmental regulations require that you have any age limitation on any of your employees? A. I believe it is the Department of Labor, Wage and Hour—for instance, you can't let a person's age from forty to sixty-five affect his hiring, and conversely, by the DOT you have to be twenty-one years old to drive.

Q. That is for driving? A. Yes. In interstate commerce or in intercity or intracity, if you will, and in dangerous article handling.

Q. Do you have any general company policies as to the standards that must be met regarding typing experience, or machine handling experience in the office, or a number of years of driving experience for drivers, or taking of physical tests **[710]** for dock employees, that type of thing? A. Well, the three you referred to, we have no general requirements for practical office skills. That again is the terminal manager's decision based on what he needs and what is available at the local area. We have no requirements on general office or directed requirements on number of years experience required for a driver. We do enforce those things set out by the De-

partment of Transportation as far as driver qualifications. That includes a test, which you don't have to pass a written test, but the driving test which you do have to pass, the application and the motor vehicles record check, if you will, on drivers, and we do require, of course, dock men to take physicals, servicemen to take physicals, mechanics to take physicals, supervisors to take physicals.

Q. Is that related to the fact that they do work that requires physical exertion, lifting? A. Why, certainly. Workmen's compensation costs will probably some day exceed accident costs, I'm sure, if they don't already.

Q. You indicated that filling out an application is required to your knowledge, is that a requirement of the Department of Transportation? A. It is a requirement of the Department of Transportation and ourselves, of course, as a matter of sound personnel practice.

[711] Q. And as such, is this made known as company policy to the various terminals? A. Yes. That is, of course, in the MOI, the procedural manual.

Q. You also indicated that driving records are checked. Is this a general company policy or procedure? A. Yes. That is laid out in the procedural manual.

Q. Now, would you tell the Court some of the procedures you have used since you have been personnel manager for the last two years to encourage the hiring of additional minorities in the various terminals? A. Basically, I think the key to success in this would be and has been source development, and for lack of a better way to put it, standards reduction.

The Court: What?

A. (By the witness) Standards reduction, a reduction of standards. For example, I went to Denver sometime early last year and Denver, of course, has a good source of line drivers for a couple of reasons. It's a nice place to live, and secondly a

lot of carriers have moved out of Colorado in the last several years because of a particular restrictive ton mile tax. They don't have a lot of drivers located there. So there is an excellent line driver pool located in Denver, so they were quite successful in holding to a fairly general standard for five years over-the-road experience, and were able **[712]** to get as many drivers as they needed under those bases. And so I went personally and worked with the line driver supervisor there, convinced him the standards perhaps should be lowered, and helped him with source development. I must say he has done a better job with that than I did by himself since, but as a result, in 1970, I believe, Denver had three hundred seventeen, or so line drivers perhaps. I think they had one Spanish surnamed. Last year we were successful in placing eight minorities out of twenty-eight road driver hires. About twenty-nine or thirty percent there. Of those eight we placed five or six had less than the five-year road driving requirement they had before.

Q. Do you remember how much driver experience, road driver experience they had? A. I know one had less than two years and the other four or five had less than five. There were two who had considerable experience. They had been owner-operators.

Q. At the Denver terminal, are there some over-the-road operations going from Denver over the montains to the West Coast? A. Yes, sir.

Q. Does this involve a different type of driving skill generally than driving on level plains and so on? A. Any degree of graphic or climatic difference from region to region will involve different skills, of course.

[713] Q. Are there any other specific things you can point to as to source development or training of minorities for certain types of jobs? A. Well, the two principles that I named earlier, that of source development and standards lowering. We have applied it in a lot of our office facilities and we have applied

it quite a bit here in our general office facility, as a matter of fact, and if you approach it with the idea of hiring on potential rather than what particularly they may have done, in spite of the fact that what you are looking for is available elsewhere, then you have the proper attitude or the proper approach.

I believe Mr. Anderson mentioned a 1972 change of operations involving a change from a sleeper operation to a single-man operation out of Chicago east. Of course, a lot of this involved domiciling drivers at Buffalo, Cleveland, Albany and a lot of the Chicago drivers were, of course, redomiciled, but as a result of that change, we had to hire about twelve road drivers in that particular region. We were only able to place two minorities in this group, but not primarily because of our standards, but because the New York Throughway Association, State organization, has very stringent rules on who is going to pull forty-foot doubles up and down their throughways.

Q. What were those requirements? A. At this time I can't give you them, but they do require that the driver be licensed through them, hold a special license **[714]** through them.

Q. Is that license based in part upon years of road experience? A. It is based on experience, it's based on his record, it's based on driving.

Q. What do you mean? A. Driving experience. In other words, his road driving experience.

Q. Have you instituted any programs of training supervisor trainees? A. Yes. For a couple of reasons. There are not as many minority supervisors available to satisfy all the companies that are looking for them. We have a difficult time attracting minority people from our docks, from our city fleets, and that is financial. I believe we showed that. So we, in an effort to get minority supervision, then we have had to, or supervision as a matter of fact, we have had to institute or hire supervisor trainees. It's not particularly a formal program, but as local

conditions require, a terminal manager may hire a supervisor trainee and bring him along himself, if you will.

We have, I believe, about five of these going on now, and three are black.

Q. Is that a problem related only to blacks or minorities, or does it occur generally in trying to get supervisors? A. Yeah, I tried to say that. It's a problem getting **[715]** supervisors.

Q. You had previously sponsored an exhibit that showed that in some cases supervisors make less than hourly employees. A. Yes.

Q. Is that a direct factor in getting these supervisors? A. Definitely.

Q. And in your working with the various terminals, and as shown by Exhibit Triple A, the contacts through minority resources, referral services, have the inquiries been more pointed toward getting people in the more highly skilled jobs such as road drivers and mechanics than in getting cadidates for some of the other jobs in the terminals? A. Yes, definitely. These I said I went through all these records when I first arrived with T.I.M.E.-DC, and on the basis of the letters written to sources, yes it would indicate that they had made pointed efforts to attract skilled people on the basis of the contract compliance people correspondence, which was generally favorable, or at least innocuous. The progress seemed to be quite good.

Q. There have been statistics introduced here on the part of the government. Have you had any occasion to study statistics yourself? A. Yes, sir.

Q. And in your preparation generally of these exhibits, did you run into any difficulties with either the statistics **[716]** that were avilable to you from company records or the statistics that were made available from the plaintiff's sources? A. Well, the statistics, of course, from the company records are not—they are good to the point that we have everybody accurately identified, I suppose. Prior to 1970, of course, there were no identifications made racially or ethnically, so that is reasonable, you could say, but in trying to make a simplistic comparison with these figures to any particular city, region, the country, it is extremely difficult, if not impossible, to come up with how you have progressed to where you are at in any point in time.

On such a simplistic basis, some of the problems you find first of all are the pure lack of definitive or comprehensive statistics. We mentioned earlier that the best Spanish surnamed statistics available to date are the 1963 subreport from a 1960 census figure, and that is only for the five southwestern states.

Another of the things that make it difficult to make a comparison, I mentioned these earlier, is where is your terminal, and where are the minorities in that community located, what is the public transportation between our terminal and the minority community or any community. What is the age of any particular segment of the population, the work force age; what are the qualified people available within any segment of the **[717]** community, black or white? There are so many variables that a real definitive approach is not practical.

Q. Now, do you have any intention to maintain an on-going program of increased hiring of minorities and attempt to train minorities, if you will, as you have indicated you have trained supervisors, in your capacity as the personnel manager at T.I.M.E.-DC? A. Yes, sir. Remember, part of our exhibits showed a very marked decline in total employment. It is extremely difficult to do anything when your total employment is decreasing.

Now, Mr. Wilkins expressed that we have a requirement to expand and grow, and I'm sure that we will, and consequently, hiring will increase. We plan to approach it, attack it from two points, in source development, standards modification, and plan, of course, to emphasize those particular areas where we may be deficient.

Mr. Schuler: Thank you, Mr. Hutchinson. No further questions.

The Court: Before we go to the cross, Mr. Wells, how about your witness that you wanted to get in today out of order?

Mr. Wells: If Your Honor please, it is quite connvenient for him to be here tomorrow.

[718] The Court: We may get to it today.

Mr. Wells: As a matter of fact, an exhibit which he may be bringing is lost on the airline and it might not be here until tomorrow morning.

The Court: You should have sent it by T.I.M.E.

All right. Do you want to go ahead with cross-examination now, or do you want a few minutes?

Mr. Fenton: I'm ready, but—if the witness would like a few minutes, that's fine.

Cross-Examination,

By Mr. Fenton

Q. Do you have Defendants' Exhibit VV before you, Mr. Hutchinson? A. It's two B's?

Q. Right.

The Court: B or V as in Victor?

Mr. Fenton: V as in Victor.

A. (By the witness) Oh. Yes, I do, sir.

Q. (By Mr. Fenton) I believe you testified that in arriving at the percentage of minorities, the population that you used is the standard metropolitan statistical area percentages where T.I.M.E.-DC has terminals, is that correct? A. (By the witness) And where there is a standard metropolitan statistical area report.

[719] Q. Isn't it true that there are many terminals of T.I.M.E.-DC where there is no standard metropolitan—— A. Yes, sir.

Q. Did you include those statistics in those statistics? A. Yes, if it was an Urban Place or in some instances, like in Decatur, Alabama, I think we had to use the county, the best there was.

Q. Were there any instances where there were none available so that you could not include that terminal? A. No, sir, there were none.

Q. All right. Now, did you use overall population statistics rather than the particular age of any group? A. Yes, we used overall population figures.

Q. You didn't break out, attempt to break out a working force, age force. A. No, sir, but we probably will.

Q. Referring for a moment to Exhibit KKK. A. Yes, sir.

Q. Did I understand your testimony to be that supervisors and foremen work an average of 86.6 hours in a two-week period rather than eighty? A. It is a semi-monthly pay period.

Q. Right. A. Mr. Fenton, there are four and a third weeks per month.

Q. So they would work 86.6 hours to obtain that semi-monthly **[720]** pay check. A. Yes, sir.

Q. And then in addition to that, you computed some overtime that you arrived at. A. Yes, sir. So the second and third column then are your effective hourly rates comparison.

Q. So excluding overtime, they would work an average of a 173.2 hours a month. A. Yes.

Q. And when you got the overtime averages that they worked, was it your testimony you got this for the month of March, 1972? A. Yes, 1971.

Q. All right. Turning to Exhibit MMM. A. Is that M or N?

Q. M as in man.

The Court: M as in Michael.

A. (By the witness) There we go.

Q. (By Mr. Fenton) Are the drivers included in this exhibit the total number of drivers that were used on the city and on the line at these various terminals regardless of whether they were only part-time drivers during that year? A. (By the witness) Yes, sir.

Q. Do you have any idea, referring to the LOS terminal, how many of those line drivers were part-time drivers? A. I have some notes on it, yes, sir, but not—not here **[721]** in front of me, Mr. Fenton. These, of course, include all drivers regardless of their amount of earnings, regardless of their status. Our previous, or your previous figures that I gave to you excluded those who made less than three thousand dollars, an arbitrary figure, but we ran these '71 earnings the same way and fround that the LOS drivers, the LOS line drivers, and the San Francisco line drivers made, excluding those who made less than three thousand dollars, still made less money than the city drivers for 1971.

The Court: Now, so we are talking about MMM, and Plaintiff's Exhibit 231, I believe it is, and they are not on the same basis because you have excluded those less than three thousand on 231.

A. (By the witness) That's right. But we do have them on the same basis.

The Court: I mean, it is hard for the Court to compare the two since they are on a different basis, even though one is used for rebuttal of the other one.

Mr. Schuler: Your Honor, we——

The Court: I am not requiring you to put the other one in, but if you're going to rebut it, it would be easier for me to compare it.

Mr. Schuler: Well, if the plaintiff would like to have the figures, we'd be glad to supply them.

Q. (By Mr. Fenton) With respect to road drivers, Mr. **[722]** Hutchinson—— A. (By the witness) Yes, sir.

Q. ——does the union reserve the right, if the average weekly earnings of his road drivers fall to $150.00 or less, to cut the road seniority board? A. That is a typical clause, yes.

Q. That is in the contract of the company as to the Teamsters union? A. In some, yes. It's not all.

Q. Is it in the Western supplement? A. I am not for sure.

Q. Well, let me show you a copy. A. Let's look.

Q. Let me show you a copy of the National Master Freight Agreement.

This is Plaintiff's Exhibit 203(a). In the National Master, it appears in the first document, turn to Page 23, if you would.

Mr. Herman: Excuse me, Mr. Fenton. The pages may not be the same. That is the National Master, but from a different subject matter that he has. Use the article and section. Article 5, I believe.

Mr. Hunter: Page 30.

The Court: Thirty, Counsel says.

Q. (By Mr. Fenton) All right. Referring to Article 5, **[723]** Section 4, Page 30 of Plaintiff's Exhibit 203(a). A. (By the witness) Yes, sir.

Q. Does that give the union the right to cut the road board? A. Yes, it does.

Q. If the—— A. If the earnings fall to $150.00 or less, not construed as imposing a limitation on earnings.

Q. All right. A. There also is a—on Page 31, there is a paragraph that says in determining whether average weekly earnings fall to $150.00 or less, only the earnings of the lower twenty-five percent. This will vary from contract to contract, or may in fact be different things in supplements that cover it, too.

Q. All right. Thank you. Do city and dock employees have the same kind of guarantee on a minimum wage, such as—— A. Well, not necessarily a minimum wage. They are guaranteed hours.

Q. All right. If their wages fall below a certain number? A. I don't believe that is in the city and dock contract, sir.

Q. Just in the road contract? A. Yes, sir.

Q. That road contract was in the National Master Freight Agreement, correct? **[724]** A. Yes, sir.

Q. So that that would apply nationwide rather than the National Master—wherever the National Master Freight Agreement is effective. A. We could assume so, yes.

Q. Now, are you aware of any time in the past where a computation such as you have done here in Exhibit MMM would result in a lower line driver salary than city driver? A. The ones we have done, based on the exclusion of those who made less than $3,000.00, there were no instances where city drivers made less—or pardon, line drivers made less than the city drivers.

The Court: There were no instances where they made less?

A. (By the witness) No, sir. I believe we did '69 and '70, were the years. Prior to that, '67, 6 and 5, our computer didn't compute.

Q. (By Mr. Fenton) Now, turn, if you would, to Exhibit NNN, Mr. Hutchinson.

Now, if I understood your testimony correctly, that—First, let me ask you this: Did you yourself do all the work that went into this exhibit? A. (By the witness) Yes, sir.

Q. Now, as I understand your testimony, you took five of your largest terminals and you selected the very best and the **[725]** very worst line drivers. A. Yes, sir.

Q. And what number of each did you select out? A. One hundred of each. Well, the first selection may have amounted to a hundred and fifty to two hundred of each, then we boiled that down to the very extreme examples.

Q. So one hundred of the best and one hundred of the worst. A. Yes, sir.

Q. And you had enough so that you had a total of two hundred at all those terminals? A. Yes, sir. Well, this was a hundred from the five, out of the five.

Q. Well, in other words—— A. Not a hundred, not a hundred from each terminal, no, sir, but a hundred from the five.

Q. I see. So your final hundred came from each of the five terminals. A. Yes, sir.

Q. Do you have any idea of what numbers come from each of the five? A. Probably proportionate to the number of line drivers at each facility, but no idea, simply as a matter of—Now, this type of sampling is, of course, not valid to draw any inference about the total line driver population, but it is typical and valid for comparing best and poorest drivers, if **[726]** you will.

Q. Now, was your testimony, the only factor you used in arriving at your criterion or arriving at your conclusion actually of best or poorest were the accidents that these individuals had? A. Yes, sir.

Q. Did you do any kind of breakdown as to the kind of accident, or did you include each and every accident that they had listed on the record? A. Each and every accident. First of all, there are few accidents that are non-preventable. Secondly, measuring an accident by its severity is not necessarily valid as to an accident. An accident is an accident.

Q. But you did include all the accidents chargeable or non-chargeable. A. Yes, sir.

Q. And also whether the driver himself caused it or was involved in it, is that correct? A. He had to be driving.

Q. He had to be a driver, but someone else could have hit him and it would show up on his record, right? A. Yes, sir.

Q. You would have counted that? A. Yes, sir.

Q. You have no idea of how many of the latter were in there, **[727]** or do you? A. Well, because we looked at so many drivers, Mr. Fenton, I suppose between Denver and Memphis, Winchester and Los Angeles, there are some eleven or twelve hundred drivers, that the very worst drivers were so very bad that the proportion of non-preventable accidents would be rather insignificant compared to their preventable accidents.

Q. Well, let me ask you this: If a driver had one bad accident, say he rolled a truck and then maybe the only other accident he had was a non-chargeable, would you have included him in your very worst category? A. No, sir.

Q. Well, what cutoff did you use to put a man in the worst category? A. The differences on cards were quite distinct. In other words, it didn't ever get down to a point to decide whether three accidents in three years or two accidents in three years would qualify you.

Q. What was that distinct point? A. There was no really distinct point, if you will. I would say in remembering, this is sometime ago, I didn't do it in this connection, but sometime ago I would say there was probably a frequency, oh, of no less

than one every two years would qualify you for the poorest category.

Q. Well, what was the minimum accident that a man had to **[728]** have to be included in the worst category? A. The minimum accidents, I can't say that. I don't know what it was.

Q. What was the least number of accidents a driver had to have to be included in the best category? A. I'm sure that in this best category there are no drivers that had more than one preventable accident in a career that may have run from no years to thirty-five years. I do remember specifically if they had less than ten years service, I didn't pick them if they had a preventable accident in that ten-year period.

Q. Could they have had more than one and still be included? A. When you're talking about guys with best experience, you're talking about drivers with twenty or twenty-five or thirty years experience. They will have been bound to have had one or two, but I'm sure that there is nobody in here that had more than two preventable accidents. We can debate about the sample for a long time, but I'm quite confident that this represents a very good selection of the best drivers and the poorest drivers.

Q. Did you use any kind of a scale with respect to evaluating the severity of the accident? A. Severity of an accident shouldn't be used in evaluating an accident.

Q. Did you use any kind of a scale? **[729]** A. No, sir.

Q. In developing your best or worst in terms of accidents themselves. A. No, sir, no, sir.

Q. Did you do any kind of a breakdown to determine whether a man with one year or less road driver experience had more accidents than a man between one to two years experience, or a man between two and three years experience? A. No, I didn't. I would have it from my source material, I suppose.

Q. Did you do any kind of a breakdown going the other way to determine whether a man between three and four had more

accidents than a man between four and five and so on? A. We broke it down in three-year intervals. The reason we chose three was primarily related to a reduction of general experience requirements to that level, if you will.

Q. So these two categories here on your exhibit NNN are the only two you used. A. No, sir, no, sir. We used, in the original report, from which this was taken, it was zero and under three, three and under six, and six and under seven. Three-year intervals.

Q. All right. I gather from this exhibit that the company has hired line drivers with less than three years road experience, is that correct? A. Yes, they have.

[730] Q. Does that include whites? A. I'm sure it would.

Q. As a matter of fact, wouldn't a great majority of them have been whites? A. Certainly, since a great majority of our line drivers were previously white.

Q. Now, I believe you also testified with respect to a five-year standard at Denver, and that would be for the road drivers. Was that a rigid requirement, that five-year standard? A. I don't know how rigidly they applied it, Mr. Fenton. As we know from the summer, that there is no such thing as a real rigid requirement.

Q. Do you recall the testimony of a Mr. William Franzen? A. Not specifically.

Q. Do you recall that Mr. Franzen moved to road driver although he had less than five years road experience? A. Yes, I do.

Q. Do you recall his race? A. Mr. Franzen is white.

Q. I believe you further testified that one of the reasons you have difficulty attracting minorities from dock and city to supervisor jobs is because of the salary. A. That is anybody, Mr. Fenton.

Q. Isn't it an additional reason that you would have that **[731]** difficulty the fact that when you move from dock or city to supervisor that you have to give up your seniority? A. Well, at that point, well, of course, you wouldn't give up your seniority for vacations, but at that point in time when you move from a dock to a supervisor position, your seniority for bidding and whatever benefits you may get on the dock has no meaning because you are out of that classification, the same as moving from city to road or whatever.

Q. In other words, your seniority for job protection is given up. A. Yes, if you will. And then we have to consider how much seniority weighs among job protection for supervisors.

Q. But a supervisor has no seniority for job protection purposes, does he? A. No, sir. It may be a factor in his job protection.

Mr. Fenton: Could we have just a moment?

Q. (By Mr. Fenton) When foremen or supervisors miss a day due to sickness, do they still get paid for that day? A. (By the witness) Yes, sir.

Q. What about dock employees when they miss a day because of sickness? A. Generally no. There may be isolated local contracts.

Q. Generally, they do not. A. They do not.

Q. City drivers, do they? **[732]** A. No, sir.

Q. Did you figure that in your computations on Exhibit KKK, I believe it was? A. No. It's kind of a nebulous figure or area, if you will, assuming that the overtime ratios that would be used are computed from full hours worked by the dock man, so the only factor then would be the time off that the supervisor may have had.

Mr. Fenton: That's all I have, Your Honor.

The Court: Mr. Wells?

Cross-Examination

By Mr. Wells

Q. Are any of your supervisors covered by collective bargaining agreements? A. No, sir.

Q. Do supervisors then have any form of job protection in terms of seniority or anything else? A. Other than their own ability, none.

Q. They have just whatever oral or written individual agreements they may have made with management. A. Yes, sir, if you will.

Q. Now, from your knowledge of the industry, is it the practice that when a person leaves a bargaining unit covered by a collective bargaining contract, that he does not retain **[733]** seniority within that unit? A. That's right, sir.

Q. Whether he goes to supervisor or whether he goes over to Lee Way or whether he goes to some other bargaining unit, or whether he retires from the industry or whatever, he loses seniority as of the time he leaves that unit. A. Yes, sir.

Q. That is——

The Court: How about sickness; you wouldn't lose seniority if you got sick, would you? How does that work? A. (By the witness) No, not if he got sick. Well, of course, there are some contracts that if you are off sick for more than two or three years, of course, you can.

The Court: When you say, "when you leave that unit," what do you mean by leaving the unit? Develop that.

Q. (By Mr. Wells) Along the line of the Court's question, when you leave the unit to become employed elsewhere, or to indicate that you no longer desire employment in that unit, did you understand my question in that sense? A. (By the witness) Yes, sir, I did.

Q. With respect to illness, does the contract provide for health and welfare payments by employer? A. Yes, it does.

Q. And in accordance with the health and welfare plan, are employees who become ill compensated in some way? **[734]** A. Yes, I'm sure they have protection under that.

Q. Are they granted leave from that unit but considered within that unit while they are on that health leave? A. Yes. That is part of these five hundred folks we talked about earlier.

Q. Are there also provisions in the contract for leave of absence for specific purposes as indicated in the contract? A. Yes, sir.

Q. For example, for limited periods of time, an employee might be elected by his brothers in the union to a union office and have some right to take a leave from that particular unit while he served as a representative of his co-workers. A. Yes, or for any personal reason.

Mr. Wells: I believe that's all.

* * * * * * * *

[737] Redirect Examination

By Mr. Schuler

Q. Mr. Hutchinson, you were asked some questions regarding Exhibit KKK, which compared effective hourly income for supervisory personnel and hourly rated personnel, and one of the questions that Mr. Fenton asked you was whether or not a supervisor's pay continues while he is sick, whereas an hourly rated man's pay does not continue while he is sick.

In that regard, does the supervisor work any additional hours before and after each of his shifts for which he is not paid? A. Yes. The assumption we made when we figured this was that, and it is conservative, but the assumption was that the supervisor walks onto the floor at the same time that the dock man

does, and walks off the floor at the same time, and in all reality, this isn't so, because you can't effectively supervise that way, without going to the road dispatcher and checking with your particular shift supervisor, so to speak, and going through the on-going operation with the fellow you're replacing.

Furthermore, if somebody is a foreman, dock foreman, if the guy is supposed to replace me is sick, we know then who takes his shift.

Q. Regarding Exhibit NNN, you were asked some questions that suggested a comparison between the number of white and black drivers that might have been compared on that exhibit, **[738]** and on the exhibit as to the Memphis city drivers who transferred to the road. Was there any intention to compare drivers by races? A. No, sir. Our purpose was not to measure black and white things, our purpose was to measure road experience on the one hand as a predictor of safe driving on the road, and to measure the results without regard again to black and white of a city transferee on the board.

Q. The specific exhibits I had reference to for that question were LLL as to the Memphis line haul accident summary, and NNN in relationship between safety records and over-the-road experience prior to employment. Did you understand my question related to those two? A. Yes, sir, I did.

Mr. Schuler: Thank you.

Your Honor, I'm going to offer another exhibit that is similar to Exhibit MMM. I had it marked as Exhibit PPP.

The Court: I believe this is in response maybe to my question wondering about the validity of NNN since it wasn't on the same basis as 231 that you were seeking to impeach there, so I am going to permit it to be introduced.

Mr. Schuler: Yes. We did not introduce its originally because we felt that there are variables in these figures as to the number of hours worked by city drivers and road drivers whenever you

try to compare them, and we thought **[739]** that actually MMM was a fairer exhibit because it just showed the earnings of all employees, but in the interest of completing the record——

The Court: We'll have both sides of the picture presented with this.

Q. (By Mr. Schuler) Mr. Hutchinson, was Exhibit PPP prepared in the same way as MMM except that you excluded earnings under $3000.00? A. (By the witness) Yes, that's true. This shows then on that basis that the LOS drivers here designated made—some line drivers made some $3600.00 less than the LOS city drivers.

Mr. Wells: If Your Honor please, I object to PPP on the same ground that I objected to the counterpart exhibit which the government offered, on the ground that to select a $3000.00 level is purely arbitrary and has no relationship to anything in this industry. I believe the record already shows the arbitrary nature of that selection. We think that it is much more demonstrative of the situation to take the entire group.

The Court: As they have done in MMM?

Mr. Wells: Yes, Your Honor.

The Court: Well, I think that would go to the weight to be given to these. I understand the basis upon which these exhibits are introduced and I'm going to overrule the objection.

[740] Mr. Fenton: Could we stipulate that PPP represents the earnings for 1971?

Mr. Schuler: Yes. It's not properly marked. It is for 1971.

The Court: Well, it's the same period as the triple M exhibit would cover.

I'll tell you, on the original of that exhibit, triple P, you put for 1971 on there. Yes, she has it.

(Defendants' Exhibit PPP received into evidence by the Court as Defendants' Exhibit PPP—1971 earnings of all driver employees at selected terminals.)

Q. (By Mr. Schuler) Mr. Hutchinson, you were also asked questions about whether you made any distinction on Exhibit NNN as between the best drivers and the worst drivers as to whether an accident was chargeable.

Now, does it make any difference in the dollars you pay out for repair costs, for equipment, whether that accident is chargeable or not?

Mr. Fenton: I would object to the form of that question.

Mr. Schuler: I will rephrase it, Your Honor.

The Court: All right.

Q. (By Mr. Schuler) Is there any difference to the company in its operations of the business based on whether the accident **[741]** is chargeable or not? A. (By the witness) No, unless there is the possibility that you can collect. Let me define chargeable and non-chargeable as defined by the ATA, if you will.

Q. What is the ATA? A. American Trucking Association. That's the contest that Mr. Sydebotham talked about. They sponsor that contest.

Q. Is that the association that most trucking companies of all categories belong to? A. Yes, sir. Yes, sir. A chargeable accident—a non-chargeable accident, pardon me, is defined as an accident in which the driver has done everything within his power to prevent, and boiled down then to a practical thing, about the only type of accident that is non-chargeable is when he is legally parked or legally stopped and somebody hits us. So the incidence of non-chargeable accidents to chargeable accidents are few. And again, I think I expressed our safety department's opinion, and my opinion, on whether you measure an accident by its severity or dollar cost or whether it, in fact, costs a life or didn't. It's still an accident.

Q. (By Mr. Schuler) If you had to replace a tractor in its entirety due to an accident, chargeable or not, approximately what kind of replacement costs are we talking about? A. Twenty to twenty-five thousand dollars.

Q. And similarly, if you had to replace a trailer, whether **[742]** it is a single unit, a so-called semi-trailer, or two trailers, the so-called pups, what kind of expense would there be to your company? A. Oh, five to twelve thousand dollars, say.

Q. For each trailer? A. Yeah.

Mr. Schuler: That's all I have. Thank you, Mr. Hutchinson.

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Recross-Examination

By Mr. Fenton

Q. Mr. Hutchinson, if one of your drivers is involved in an accident and there are other parties also involved in the accident, and from your investigation you make a determination that it was the fault of another party, party other than your driver, do you make every effort to recover the monetary loss which you have suffered in that accident from the other driver? A. Every effort? What does that mean?

Q. I mean do you attempt to recover money that you have lost in that accident, such as caused by damage to your equipment from the other driver? A. Yes, we would.

Q. Now, I believe you made the statement that the incidence **[743]** of non-chargeables to chargeables would not be very great. A. Yes, sir.

Q. What do you base that on? A. What do I base that on?

Primarily experience in the field. I have no particular data in front of me that says we had this number of——

Q. In other words, you didn't go through the hundred drivers before—the hundred drivers you used in Exhibit NNN, you

didn't go through and make an actual computation of that incidence. A. No, sir.

Mr. Fenton: That's all I have.

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[751] **RALPH DIXON,**

called as a witness at the instance of the defendant, unions, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Wells

Q. State your name, please, sir. A. Ralph Dixon.

Q. What is your occupation, Mr. Dixon? **[752]** A. Labor representative for the Teamsters Union.

Q. Do you belong to a local union chartered by the International Brotherhood of Teamsters? A. I am a member of Local 745 in Dallas.

Q. How long have you been a member of that local? A. Since the early part of 1944.

Q. Would you very briefly, beginning in early '44, trace your relationship with the Teamsters Union, either its local or any other Teamster body. A. At that time I was a member of the local union and an employee of Texas and Pacific Motor Transport as a line driver, and sometime in 1945 I was selected as a steward on that job, and just shortly after that I was selected as a trustee on the executive board of that local union.

Q. May I intrude there. Is it true that each local union has a board of trustees consisting of seven members? A. No,

they have an executive board consisting of seven members that contains three trustees.

Q. Who else make up the executive board? A. A president, a vice president, a secretary-treasurer, a recording secretary and three trustees.

Q. How are those seven officers of a local union selected? A. They are elected by the bylaws and constitution of the union by the membership of that local union.

Q. All right. Now, we've gotten to the point where you were **[753]** a trustee of Local 745. Would you proceed, please, sir. A. In early 1946 I was hired by the then manager of that local union as a business agent, or assistant agent, to work for the local union in organizing and helping to negotiate whatever assignments were given to me.

Q. You speak of manager of a local union. Is there such a constitutional officer or what do you mean by that? A. No, this is a person designated or selected by that membership when they elect the officers as the principal officer in charge of the local union.

Q. In some local that may be the president, in others it might be the secretary-treasurer, is that true? A. Right. He is designated as being the one who has the top authority.

Q. All right. He was elected, he in turn selected you as one of his assistants, is that correct? A. Yes, sir.

Q. Now, proceed. A. Sometime in the latter part of 1946 I was also hired by another local union, 342, in Dallas, and during that period I worked for both Local 745 and Local 342.

In early 1947 I severed my relationship with 745 and continued as a representative of 342, at that time as the principal officer of that local union.

The Court: 342 is a Teamsters Union also?

[754] A. (By the witness) Yes, sir. It was a department store and warehouse local union as distinguished from a regular truck-driver's local.

In approximately June, the latter part of June, I believe it was, I went back to the road driving and I drove until I believe sometime in October, at which point I was hired back as an agent, a business agent of Local 745, that local union being under trusteeship at the time.

In early '48, something like the latter part of February or March, that local came out of trusteeship, at which time I was elected by the membership of that local union as the secretary-treasurer and business manager of that local union.

Q. (By Mr. Wells) That is Local 745 in Dallas? A. (By the witness) Yes, sir.

Q. What jurisdiction did that local have? A. It covered all the jurisdiction of the Teamsters Union other than that covered by the warehouse and department store employees from Dallas, generally speaking, halfway to the next local union in any direction.

Q. All right. But was it a so-called freight local? Did you have negotiations and relationships with employers in the freight industry? A. It handled all relationships covering freight employees for that area.

Q. All right. Now, without too much detail, just go ahead **[755]** and tell the Court what other Teamster relationship you had. A. Well, in 1950 I was hired by General President Tobin as a general organizer for the International Union. At various points I have held positions in the trade divisions of the conference or national divisions.

In '52 I quit the International Union and went back to Local 745 until the end of that year. I worked for Local 822 in Norfolk, Virginia in early '53 until sometime in April, at which time I went to work as an organizer for the Southern Conference of Teamsters, covering the south.

In 1958, the first of August, I was hired back as a general organizer for the International Union. Sometime in the mid-fifties I was elected by the delegates of the Southern Conference as secretary-treasurer of the Southern Conference of Teamsters, a post that I've held since that time.

I think that about covers it.

Q. All right. And would you briefly describe the union organization beginning with, for example, the local union, let's say Local Union 745. I believe you have indicated that that is a union headquartered at Dallas with certain geographic and certain industry jurisdiction.

Now, what relationship does it have to other Teamster bodies? A. A local union is a group in a locality that has a charter from the International Union as a local union, which is **[756]** obtained either by the Teamsters organizing a group of people and issuing a charter or by a group of people organizing themselves and requesting a charter from the International Union. This charter permits that local union to have bylaws of their own, which are not in conflict with the National Constitution, under which they handle all of their own affairs, subject only to the requirements of the International Constitution.

The next step is the Joint Council, again a chartered organization of the International Union.

Q. What is the Joint Council? A. A Joint Council is an organization to which local unions in the city where the charter is issued are suppose to affiliate with the Joint Council.

The Court: Now, do you mean just—you say the local union in the city, are you talking about the Teamsters affiliated locals?

A. (By the witness) Yes, sir, always talking about the Teamster local.

The Court: Which freight area or warehouse area or department store?

A. (By the witness) The construction——

The Court: All of them come together in a Joint Council in the City?

A. (By the witness) The way the constitution spells it out, **[757]** if there are more than two or three local unions in a city, then a Joint Council charter shall be issued, and it is a requirement that all local unions in that city belong to that Joint Council.

The Court: What was a little confusing to me, you say within the city, yet a minute ago Local 745 might encompass several cities.

A. (By the witness) But the charter is in Dallas. The charter could be in some other city within that jurisdiction.

The Court: But 745 might belong to more than one Joint Council, say Fort Worth.

A. (By the witness) I know of no instance where the local union belongs to more than one Joint Council. First it says if there is more than—there will be a Joint Council charter issued, then it says that if there are local unions adjacent to that anywhere around and there is not sufficient to justify another charter of a Joint Council, then those local unions belong to this Joint Council. The result is in North Texas and this will spell it out, the Joint Council is located at Dallas, but local unions at Amarillo, Fort Worth, Shreveport, as well as Dallas belong to that Joint Council. So there is two Joint Councils in Texas, one for North Texas and one for South Texas.

The Court: That explains it. Thank you.

Q. (By Mr. Wells) All right. Now, above the Joint Council— **[758]** Well, first, is the Joint Council a membership or a delegate body? A. (By the witness) It is a delegate. Each elected officer of a local union is a delegate to the Joint Council, and then they elect an official executive board of the Joint Council from among themselves, being again, a president, a vice president, a secretary-treasurer, recording secretary and three trustees.

Q. All right, sir. Now, we have pinpointed a local union, a Joint Council. What is the next body? A. The next actual body is the area conference, however, the constitution permits state conferences. We have——

Q. Are there state conferences? A. We have several state conferences. We have a state conference in the State of Texas. The state conference is again chartered by the International Union, and its purposes are generally to be a body through which all local unions in the state could operate with each other in organizing programs and that type of thing.

Q. All right. What is an area conference? A. An area conference is four chartered bodies dividing the International Union into four segments, east, west, north and central. These are bodies under which the constitution says that the director of the conference shall be appointed by the general president of the International Union, but each **[759]** conference has bylaws of its own under which it elects policy board and other officials, so that again the conference, as such, has all of the local unions in the conference affiliated with the area conference.

Q. Is it in turn a delegate body? A. It is a delegate body. The Southern Conference is composed of two delegates from each local union.

Q. In the south? A. In the south.

Q. In ten southern states, roughly from Texas to Florida? A. Right.

The Court: Does this sort of bypass the area council organizational-wise?

A. (By the witness) You mean the Joint Council?

The Court: Yes.

A. (By the witness) It is the governing body for all local unions within the area boundaries.

The Court: Does the Joint Council select delegates to the area conference, or is it selected by local unions?

A. (By the witness) No, the local unions select delegates. The Joint Council do not have delegates to the Southern Conference, although the Joint Council has delegates to the International Convention, but they don't have delegates to the Southern Conference as such.

[760] Q. (By Mr. Wells) May we back up to the joint council for a moment?

If there comes some squabble within the local union and the executive board makes a determination there, which one side in the local is not pleased with, is there an appeal from the local union executive board's decision to somebody? A. (By the witness) This is generally the main function of a joint council, to be governing body over the local unions within that area to which any dispute within a local union, or between two local unions, can be appealed to the joint council for hearing.

Q. All right. The area conference does not perform that function. A. No.

Q. Now, we are to the point of an area conference. You have indicated that the two principal officers of each local in the conference area are ex officio delegates to the area conference. A. Yes.

Q. Do they in turn select some governing body of the area conference? A. Yes, they elect what we call the policy Committee, or Policy Board of the area conference.

Q. How often does the area conference as a whole meet? A. Well, that depends on the bylaws of the area conference. **[761]** The Southern Conference meets as often as may be required by either the delegates or the principal officer or not later than every four years to elect officers.

Q. How often does that Policy Board of the area conference meet? A. It is subject to call at any time by a forum of delegates, or the officers.

Q. All right. Now, we have gone local union, joint council, state conference, area conference. Now, how about the International? A. The International is a union originally chartered by the AFL, but now an independent union that has jurisdiction throughout the United States and its possessions and Canada, covering certain types of jurisdiction, which are numerous, but listed in the constitution itself.

Q. How often does it meet? A. The International Constitution provides that the International Union shall be called into convention every five years.

Q. For example, was there a convention last year in the International Union? A. Yes.

Q. That in turn was a delegate body. A. That is a delegate body. The constitution spells out how the delegates are enumerated and selected. It provides for **[762]** a ratio, depending on the size of the local union. Any local union, however small, has delegates to the International Convention, and then after the local unions reach a certain size, say, seven hundred, from there on for every so many hundred members they have another delegate.

Q. So the larger union locals will have a larger representation than the smaller ones. A. Yes.

Q. What functions are performed at the Internationl Convention? A. Those delegates vote on whatever provisions are in the International Constitution, either to leave them as they are, to change them as they wish, or to make up whatever rules the union is going to live by which are set forth in the constitution.

Q. Does that constitution—does that convention revise the constitution and make policy for the next five years? A. It

sets policy for the next five years except as is accepted in such constitution, to the discretion of the officers which are elected at such convention by the delegates.

Q. All right. And what officers of the International Union are elected by the delegates to the convention? A. The general president. At this point it is general secretary-treasurer, and I believe it is some thirteen or fourteen vice presidents and three trustees.

Q. All right. Now, does that in brief outline the **[763]** organizational structure within the union? A. Yes.

Q. Now, turning your attention——

The Court: One thing. I have either forgotten or didn't understand how the state convention, is it?

A. (By the witness) State conference.

The Court: What is it composed of?

A. (By the witness) It is composed of all of the unions within the state.

The Court: They elect delegates to that, to the state conference, or how?

A. (By the witness) The delegates to the state conference, the bylaws of the state conference provide that the two principal officers of the local union are delegates to the state conference, so those delegates decide on what the bylaws shall be, what the authority shall be and elect the officers.

The joint council is what I call the governing body over those local unions to the extent that whatever appeals come up, whether from individual members or between local unions, are taken to the joint council for them to rule on, and if not settled there, or even if they make a decision, there is an appeal from that body to the International Union executive board.

The Court: Well, everything is a delegate organization with the exception of the local union which is a **[764]** membership organization.

A. (By the witness) Yes, sir.

Q. (By Mr. Wells) Is it true basically, as you have indicated, the joint council is an appellant body from the local unions or local union members, whereas the state conference has to do more in terms of organizing or perhaps investigation and advise with respect to political matters, that kind of thing? A. (By the witness) Well, I don't want to leave the impression that the joint council don't always do those things, and can't, because anything with the local unions in an area want to cooperate with each other, they can, but the principal function of the constitution in setting up the joint council is to provide for an appeal body. The principal function of the state conference is to simply join together the efforts of all local unions in an area in organizing programs and, yes, politically, or any other matter that they are interested in.

Q. All right. Now, we have gone over the organizational structure of the union.

I'd now like you to turn your attention to the bargaining procedures and focusing on the freight industry as of now. We may get in the history a little later, but as of right now, assume that there was an open contract, no contract in the freight industry as of right now. What would happen? **[765]** A. If there were no contract in the freight industry right now?

Q. Yes, sir. Well, wait—— A. What would happen from what end?

Q. Let's back up to what happened in 1970 with respect to the negotiations of various freight contracts which are in evidence here. A. Well, I gather your question goes to this: Knowing that the contract had an expiration date at the end of '69 or early '70, in late '69 it became the responsibility of the various

elected or selected officials of the various organizations in freight to alert all local unions. They, themselves, are supposed to know it, likewise, that the contract expiration date is approaching, and there is then called a meeting of representatives of all effected or affected local unions. These people go into a meeting and discuss how they propose to handle the coming negotiations.

They then set up dates when the call meetings of the effected members of their various local unions in freight to alert those people that at this particular meeting they will consider any proposals that the memberships have to be put in the next contract. At such meeting the local union takes down all requests of any member, they discuss proposals and sometimes the membership will decide, will you propose this, and I propose that, let's put this in the proposal. Other times the **[766]** membership don't agree on everything, so they will put each proposal in, so any proposal that the local union wants to send in, they will send in, in that case, to the national office in Washington, so that all local unions then send in their proposals, any proposal they want to make in the coming contract.

Q. Assuming there are three or four hundred locals involved in freight, I take it that at some point then there are various proposals from three to four hundred local unions. A. Right.

Q. What happens to those proposals? A. Then there is a meeting called of representatives of all local unions, in that case in Washington, to actually take all those proposals and go over them word for word so that the group together can make up from that a proposal that the group wants to present to the employers.

Q. All right. And what is this group that you say meets in Washington to screen these proposals? A. It is delegates from the involved local unions and the involved conferences.

Q. Is it only those local unions that have freight jurisdiction? A. It is only local unions that have freight jurisdiction, although

local unions that have had freight jurisdiction many times have other jurisdictions, but this only concerns freight local unions.

[767] Q. Once this committee made up of the representatives of the freight involved locals meets and screens for the proposals then what happens? A. Well, then, steps are taken to—well, during this time steps are taken to see that all local unions are alerted in the original meeting where there are drafting proposals for the membership to authorize, if they will, powers of attorney to be given by the local union to a committee to handle negotiations.

Q. Then, does each local union in freight execute a power of attorney authorizing a committee to bargain on behalf of that local union with an industry committee representative of the employers with whom that local union has a contract? A. To put it a different way, the only way we got into area negotiations for national negotiations was when local unions gave power of attorney to such a committee to negotiate for them.

In the beginning some local unions gave power of attorney and some didn't. Those that didn't we didn't negotiate for on that basis. We only negotiated on the local unions who gave power of attorney.

At the present time, I don't know of any local union that fails to give power of attorney, but we negotiate for those local unions who do give power of attorney.

Q. All right. Did that power of attorney give the **[768]** National Over-The-Road and City Cartage Policy and—— A. In that negotiation the power of attorney was given to that named body as a body to act as the negotiating committee.

Q. Well, who makes up that committee? A. It is made up of representatives selected by the delegates from the local unions, or appointed by the area conferences.

Q. Well, for example, just picked up this local—National Master and Garage Supplement, which on Page 157 lists the

negotiating committee. Who is Frank Fitzsimmons? A. He is the general president of the International Union at this time.

Q. Just run down there and identify each of the persons on the committee. A. Murray W. Miller is now the general secretary-treasurer of the International Union. At that point he was the director of the Southern Conference.

Joseph Teratolla is the area director of the Eastern Conference of Teamsters.

William Pressor is a business manager of a local union in Ohio. He is also a vice president of the International Union.

William McCarthy is a business agent of a local union in Boston, Massachusetts. He is also a member of the International Executive Board.

[769] Roy Williams is a president-business manager of a local union in Kansas City. He wasn't then, but is now a vice president of the International Union.

Ralph Dixon is myself.

Robert Flynn is a general organizer for the International Union. He is also a representative of the Eastern Conference of Teamsters.

A. J. Hardy, I'm not sure what his title is. He, along with the last named one there, Al Wise, come out of the research department of the International Union.

Q. Go ahead. A. Elvin Hughes is a representative of a local union, I think, in Ohio. He is also a general organizer. Weldon Matthews is executive assistant to the general president of the International Union. He is also the president of a freight local union out at Atlanta, Georgia.

Fern Melton is a general organizer, representative of the Western Conference of Teamsters.

Joe Morgan is a general organizer. He wasn't then but he is now area director of the Southern Conference and a vice president of the International Union.

Walter Shea is an assistant of the general president, Fitzsimmons.

B. M. Wagner is an officer of the joint council in Phoenix, Arizona.

[770] Q. All right, sir. Now, you say after that committee is selected and screens the proposals, then what happens? A. Now, I didn't say that that committee screens those proposals. I said that the total delegation from the local unions and the conferences screen proposals and make up what shall then be the proposal.

Q. And in turn select the committee that you have just identified? A. Right.

Q. Then what happens? A. Well, then contacts are made with the employer representatives and associations setting forth a time and place to meet to begin negotiations, which has to be mutually agreed to, and then preparations are made to actually draft the proposals, make copies of them sufficient for everyone, so that when the time comes to get into the meetings that actual copies of all powers of attorney from the unions' side can be given to all employers.

Efforts are made to ascertain from the employers who are going to be represented by any employer associations, and from all other employers, how they want to meet us in the negotiations.

Q. Now, to shortcut this a little bit, is there an exchange of powers of attorney, the employer power of attorney to the unions and the union power of attorney to the employer representative? **[771]** A. Right.

Q. After that's done, then does this committee meet with TEI designated employer representative? A. Yes.

Q. And simultaneously are there area committees of local unions designated negotiators for each area and employer designated representatives for each area? A. Yes. We have

a committee who meets jointly with the employers to discuss and try to negotiate aspects of, say, the National Master. Now, we at the same time have representatives of the employers and representatives of the unions representing the various areas to at the same time be trying to negotiate the supplement that applies to them.

Q. In the course of collective bargaining does there come a so-called National Master Umbrella Contract, various area contracts simultaneously negotiated? A. Yes, sir.

Q. Assume that this is done, what are the areas that are covered? A. The Southern Conference, the Central Conference, the Eastern Conference and the Western Conference are the principal supplements. However, there are other supplements involved called supplements or riders.

Q. For example. A. The New England Supplement or the New York Supplement or **[772]** the Ohio Rider.

Q. All right. Now, once these are negotiated to the satisfaction of the negotiating committees, then what happens? A. Well, simultaneously with this that we have named, negotiations—there is always negotiations going between the representatives of union negotiating committees and individual employers and groups of employees not represented by the named association.

Q. Are you saying that some employer will not give power of attorney? A. That's right.

Q. Some of them will want to sit on the sidelines and see what the powers of attorney negotiators are doing and others may insist on their own individual negotiations, is that right? A. That's right.

Q. All right. Go ahead. A. So after this is all done, when there is a meeting of minds at any point, then there is a meeting called of the full negotiating committee as far as the union is concerned to go over what has been generally agreed

to at this point to see if there is an approval of it. If there is not approval, then the committee goes back to attempt to negotiate until there is something they can approve. If there is approval, then all local unions are called in, or delegates from all local unions, to give to them what has been tentatively agreed to, and **[773]** see if they approve it. If they approve it, then at that point there is generally two things done. One, if they approve it, go back and call a meeting of all local unions and there is a recommendation from the negotiating committee that goes to the membership that it should be approved, or sometimes at that stage of it, they are not wholly in accord. and maybe they recommend to the membership that they turn it down. It depends on what the status of the approval is in the committee, but in any event, any negotiated agreement is tentative until it is ratified by majority of the affected employees involved.

The Court: Local unions?

A. (By the Witness) Of all local unions.

The Court: You mean one local could refuse to approve by majority vote and that would prevent the others from adopting?

A. (By the Witness) No, sir, that is not right. That is the reason I stated all unions—it takes a majority vote of all employees covered by that contract, so this means that one local union could vote it down, but all the rest of the local unions approved it, they were in majority, then all would be bound by it.

The Court: Vote as a whole.

A. (By the Witness) Right. Or on the other hand, one local union could approve it and a majority of the other local unions turn it down and it could be turned down.

[774] The Court: The cumulative total of all voting in all unions.

A. (By the witness) Yes, sir. Because it comes to the point now where many times instead of voting in the local union they take referendum secret ballot vote, sent to the membership. In the last two times I believe they have been counted by the Labor Department to make sure there was an actual secret ballot vote.

Q. (By Mr. Wells) By the United States Department of Labor? A. (By the witness) Yes.

Q. All right. Now, you have gotten to that point, and the membership has ratified it. Then what happens? A. Well, if they ratified it, then we see whether or not the employers' groups tell us that their governing body has ratified it. If they have, then there is a meeting to sign the agreements and get them into effect.

Q. All right. And are there meetings then held at local union levels between what parties with respect to the contracts? A. If it's approved, then all local unions are notified that it has not been ratified and approved, then each local union at that point makes copies of it and gets with the employer that they do business with to get that contract signed.

Q. And at that point do there come certain riders and supplemental agreements that may have merely local application? A. If there is conditions or work rules that are in the **[775]** locality alone, it's up to that local union and the individual employer to work those out, and if necessary, put them in writing.

Q. And then, is the signed contract similar to this that is in evidence, I believe it is Exhibit 203, signed between the local union affected and the company at the particular locality? A. Yes, sir.

Q. Now, this record shows that there are four bargaining units at least in the freight industry, over-the-road, city, garage, and office. Very briefly, would you outline the history of the development of those four separate bargaining unit. A. Well, back when I first got into the union industry in 1940, there

wasn't a lot of people organized. At that point a group of city employees of a freight company was organized in one instance and most other companies' city employees were not organized. Another company might have—we might have their road drivers organized, but no other employees. At this point, say, in Dallas, there was only one group of garage employees that was organized by the Teamsters, so in the process of people at that time trying to get organized, and we trying to help them, the union organized such people as came in and wanted to be organized. In some instances, this was both city and road drivers of a company. In other instances it was road drivers alone. In other instances it was city drivers **[776]** alone. In other instances it was clerks alone and in other instances it was garage employees alone. So whatever group came in, we would sign them up and attempt to get them organized.

Q. And on occasion did you go to the National Labor Relations Board for certification as the exclusive bargaining agent for a group of employees? A. In those days there were times when we forced into the Board, part of it because of the employers refusing to deal with us. We were, under the Act, able to go to the Board and secure representation from them in trying to set up some type of election, but they then controlled the unit that would be covered, so——

Mr. Wells: If we may shortcut this, Your Honor, I believe it's a matter of law and briefs before you with respect to the Board determination of bargaining units, and there are citations to you of Board decisions with respect to the Board definition of separate bargaining units.

The Court: I understand.

Q. (By Mr. Wells) Now, were there some instances back in those early days when road and city people were in the same unit, they all came to you and wanted to be organized together? A. (By the witness) Yes, sir.

Q. For example, Best Motor Lines, are you familiar with that situation? A. Best Motor Lines was one freight line that at that point **[777]** was organized both city and road, but at that time no clerks or garage mechanics, and with that company we had an agreement covering road and city drivers together.

Q. In a single unit. A. Yes.

Q. Now, what kind of experience did you have with that? A. The experience, a couple of years later the people told us that it was bad experience. The city portion of it said, well, these road drivers who have several years seniority are electing to drive on good runs over the road up in the central states, Indianapolis and Chicago, where they can make money in good weather. Then, when—in the wintertime the weather gets bad, they are coming south and bumping us off our jobs in order to take advantage of the good climate down south. So the city people at that point said we don't like this, we would prefer to separate the seniority of these two, and the outcome of the argument was that many road drivers agreed that they would rather have a separate seniority. That came in the point in the contract where there were a division. They separate those two into road and city units.

Q. Did race have anything to do with that? A. No, sir.

Q. All right. Now, has there been then for approximately how long, to your knowledge, has there been the basic division between road and city units? **[778]** A. In the freight, as you know it under this contract, since about the first part of 1947.

Now, we have other freight contracts, like with railroad transport companies that have from that time until now maintained one seniority for road and city drivers.

Q. The freight industry as such, leaving aside the rail related situation, which is a little different, I take it, has been divided at least since the late forties? A. Well, it's divided, Number One, between the road and city, but then as the garage people were organized they were designated as a separate unit, and negotiated separate agreements, which kept them separate from the city and the road, and as clerical groups were organized they were designated as separate units and were under contracts separate from the garage and the city and the road.

Q. All right. Now, with respect to the seniority practices within each bargaining unit, would you state for the record what those have been? A. The seniority provisions, Number One, before they were organized none of them had any seniority.

Q. Seniority is a creature of a contract, is it not? If an employee doesn't have either an individual contract or a collective contract providing for seniority, he is at the whim of the employer. A. Right. So therefore, our first concern always has been **[779]** when people are organized is to set up seniority protections. The union people have always tried to get the best seniority protection they could in a contract for themselves. So this has been generally that the seniority of the people involved go back to their last date of hire within that unit.

Now, whatever seniority was negotiated covering, say, city and road drivers, it at that time applied to those people at the domicile where they were located.

Q. Now, you're talking about at that time. What time? A. In the forties, for instance.

Q. And as I understand you, in the forties when all this began to evolve, this was long before there were any area or national agreements. A. Right. See, if we had the city people organized in Dallas and Houston of a company, at that point many of the companies didn't have their, what we call, own drivers operating over-the-road. They had what we call gypsies or independent owners who own their own equipment and did the over-the-road hauling for such companies that were unorganized.

Q. Then, you might organize the company's employees in Houston and in Dallas as separate units, and there would be a hiatus or a gap as far as the road was concerned organization-

wise. A. Right. Or if we organized the road drivers of a company, there was many times the city employees of the same company in **[780]** many cities were yet unorganized.

Q. Was it true at that point in history that many companies that had line hauls would contract out their city work? A. Contract out their city work?

Q. Yes. They would not have any city employees. They would only have road employees. A. Right.

Q. All right. Now, against that kind of an economic background, were the units set up either by NLRB or by the choice of the employees in the separate units as indicated? A. That is the way they were set up, and generally the reason for it.

Q. Now, you have indicated as of that time they were rather local and there was no—not much integration with respect to them, integration in the sense of integration of the units or working together of the units. How did that develop? A. Well, because take Dallas, they organized the employees that they represented of a company in Dallas now sometime different from that of a local unit in Houston would organize employees of the same company and negotiate a completely different contract, whatever they could with the company. So now, they both had separate seniority standings. The Dallas people had—whatever seniority they have applied only in Dallas and the seniority the people in Houston had applied only in Houston. So then, there came a time when the employer **[781]** said, well, business is such I want to shift my operations, I'm going to close down my operations, if it is road, in Houston and I can operate all the freight between Dallas and Houston from Dallas. If he did that, all the road drivers who were domiciled at Houston didn't have any jobs. The people in Dallas did all the work, even if it meant the employer hired other new people to go to work in Dallas, and put them on the seniority roster. The people may have worked for the company five or ten years in Houston, but they had no right to go to Dallas.

Q. All right. Now, in the late forties, what kind of operation was there from Dallas to Houston; how long did it take? A. In the late forties the highway and the equipment of the employers was such that generally it took around ten hours to go from Dallas to Houston.

Q. Could there be a turn around Dallas-Houston-Dallas? A. No, no possible way. That would be strictly a layover because the regulations of the Interstate Commerce Commission and the Railroad Commission state a driver could only be on duty a certain length of time before he had to take a rest.

Q. This would mean then freight going from Dallas would have to go by a driver who would then go to Houston and lay over how many hours before he could come back? A. This depends on the company and its freight operations, but generally speaking, he would leave Dallas sometime in the **[782]** early evening, like tonight, and arrive in Houston sometime the next morning, then he couldn't leave Houston until tomorrow night at about the same time, because it depended on the city trucks coming in off the streets late in the evening and the company being able to unload those city trucks for freight going toward Dallas, putting it on a truck so that this driver could return.

Q. In the meantime, some member of a Houston local would have initiated a trip in Houston and gone to Dallas and been in the same situation. A. Yes, right.

Q. With separate seniority lists, Houston and Dallas. A. Yes.

Q. All right. Now—— A. So that brought up the question under that contract, if there was a first load from Houston to Dallas, then under the Houston contract the Houston driver got to pull it. The Dallas driver who was there from Dallas couldn't pull until after the Houston driver had run.

Q. You mean a Dallas driver might have to sit around for two or three days before the Houston board was exhausted? A.

Until, under the provisions of the two contracts, he could return or it was exhausted.

Q. Then, was it practical at that time for a fellow to work part-time on the dock and work casual on the road? **[783]** A. It wasn't practical.

Q. Why not? A. Some companies did it, but generally most companies did not do it because then the regulations were in effect also that a man working on the road had to log hours on-duty driving and on duty otherwise and had to account for his rest periods in between time.

Q. Was there ICC regulations with respect to the number of hours you could drive and the number of hours you had to rest? A. Yes.

Q. And if a fellow was working on the dock for X number of hours, would it then be practical for him to get on a road truck and drive at night, or would he violate the government regulations? A. He had to do one of two things. He had to either, after working in the city, take off a certain number of hours for rest before he could pull the road trip, which delayed the road trip, or if the company permitted him to go ahead and pull on the road, then he would run out of hours and he would either have to be in violation to finish the run or else he would have to be tied up until his hours caught up to where he could continue the run.

Q. Was this one of the reasons that there was separation between city drivers and road drivers as of that time? A. Yes.

[784] Q. All right. Now, let's try to shortcut, if we can. I take it now following through on our example, Dallas, Houston, now there's a lot better roads, there's an interstate between Dallas and Houston, right? A. Yes.

Q. And instead of the ten hours in one direction, what does it take Dallas-Houston? A. Well, there is two things involved there. Not only is there an interstate straighter and better road,

but also the company has improved, much improved equipment. The result is the same company maybe has its drivers now operating turn-around runs from Dallas to Houston with one man making the round trip in less hours than it took in the forties to make it one way.

Q. Is a man able to meet Department of Transportation regulations and go Dallas-Houston-Dallas within the ten-hour limitation? A. Yes. Of course, another factor is that is under present day operations, generally speaking, the company will have that driver take a truckload from Dallas to Houston and drop it at the dock, pick up another loaded trailer, come back, where in the forties, generally speaking, that road driver loaded and unloaded his truck as he went down the road.

Q. Would it be practical in today's market when you've got better equipment and better roads for a city—for a company **[785]** to move people back and forth between city and road, or would there be still problems with respect to the ten-hour limitation and the rest period limitations that are required by the government?

Mr. Fenton: Your Honor, I object to the form of that question.

The Court: Well, might be suggestive of the answer, but I'm going to overrule and permit him to answer the question.

A. (By the witness) Well, the regulations, particularly from the Department of Transportation, the ICC and state regulatory bodies are more stringent now than they were then governing the hours of service.

Q. (By Mr. Wells) I don't want to lead you about it, Mr. Dixon. Just tell the Court what, if any, problem would result if an employer in Dallas-Houston attempted to utilize city drivers to handle road work, or road drivers to handle city work?

Mr. Fenton: Could I ask for a clarification? Is Counsel's question directed to the situation where a city driver would remain a regular city employee and pull road work on the side or move entirely from city to road?

The Court: I understood it to be merging the two units where you are just interchangeably in there rather than pulling extra, as you suggested, or rather than **[786]** keeping——

Mr. Wells: I'm going to ask it both ways.

The Court: Which one are we asking about first, now?

Mr. Wells: We are asking about merging so that fellow works part of the time in the city and part of the time on the road.

The Court: All on the same board?

Mr. Wells: Yes, sir.

A. (By the witness) Then the city man who has worked his shift in the city under the regulations would be unable to pull road trips without violating the regulations on his hours of service without taking a rest in between times.

Likewise, on your question, if the road driver has pulled a road trip and came in, he would have to take a rest period before he could perform a day's work in the city, or else there would be a violation.

The Court: Would there be any more risk involved than it would be when a road driver pulls a road job? He's got to take a rest period before he can pull another one, doesn't he?

A. (By the witness) That's right, but the big difference is that a lot of companies who have large operations may have shifts on the dock around the clock. Generally speaking, the freight industry has the city people working in the daytime, **[787]** because regardless of their shift around the clock, and in handling the freight the pickup and delivery drivers normally can only work in the daytime.

The Court: You're saying it's two different functions.

A. (By the witness) I'm saying it's two different functions. So the city people are working in the daytime and the road drivers generally are pulling this freight at night, although they also work in the daytime, but when you run them together, for the employer to have the necessary employees to work today and to have road drivers to work tonight, there is no eight hours in between that period, so if this city man is able to rest enough between the time he worked today, say, I got off at 2:00 this afternoon, then he can get eight hours rest, leave at 10:00 tonight, and by the time he pulled that road trip and come back he can't possibly get rest to work again in the city tomorrow, so the employer has to hire additional city people to be able to protect their job tomorrow in the city.

Q. (By Mr. Wells) Is there an economic basis for this, also? A. (By the witness) This is what many employers tell us. Of course, there is actual facts under the prescribed regulations, but the additional part from the employer's angle, they tell us, is that the city man who was worked, or the road driver who has worked, but particularly the city man, if they attempt **[788]** to use him out on the road that night without rest, he is very likely to get sleepy and run off the road and kill somebody including himself.

The Court: Let's go into the other side of the coin Counsel brought up. You indicated you were going to ask about both of them.

Mr. Wells: All right.

Q. (By Mr. Wells) Let's take the situation where there are the separate units, but a man is in a particular unit and wants to work casual in the other unit. Are there problems there? A. (By the witness) Wants to work casual in the other unit?

Q. Suppose Nat Wells is working from eight to four on the city and I need some more money and I want to work casual on the road. Are there problems in that? A. Well, the employer says there is problems. The real problem is simply that

the employer has a group of people that he feels are necessary within the confines of our contract to do his work. When he has those and has to pay health and welfare and pension and those things on the man for any day he works in the city, if he uses that man to go over and work casual on the road, then the time that he might work casual on the road takes him out of this work force and if while he's on that casual trip on the road the employer has an influx of unexpected freight, they need additional city people because **[789]** this man is now casually working on the road, they've got to go out and hire additional employees in the city in order to do this work. This is one of the things.

The Court: That would be similar to the problem created in the first example.

A. (By the witness) Yes, sir.

The Court: But that is not, as I understood it, not exactly the situation, Counsel. Maybe——

Mr. Fenton: I'll get into my things on cross.

The Court: All right. I think that may be best.

A. (By the witness) If I may, he asked me two parts of that, one on the causal and I have tried to answer it on the casual part. If the city people were actually used, forgetting, say, they are not going to be working for six months in the city, then it becomes a different question because they are available to, as a work force, pull casual on the road or anything else. In that case, from any viewpoint, I see no problem for the employer to use those people casual on the road.

The Court: Well, but if you're laid off for six months on the dock, the likelihood is there's not going to be any road work available for a casual, is there?

A. (By the witness) Doesn't follow at all.

The Court: It doesn't?

[790] A. (By the witness) The employer has full control over the number of road drivers that he uses.

The Court: I'm talking about business generated. Business falls off, he's not going to need any extra on the road.

A. (By the witness) This doesn't necessarily follow because most employers or a great majority of employers keep a goodly number of road drivers that are called extra drivers. They are extra drivers under our contract work strictly by seniority, so the top senior man on the extra board, if there is a run that comes up, he has his rest, he's available to go and he gets that run, even if he runs eight trips a week, while the bottom man on that extra board may be sitting there pulling two trips a week, one trip a week, or no trips, so in that category then, there might be extra trips or casual trips available on the road when the employers gets a large amount of business on Sunday night that has to go out Monday, so he needs maybe sometimes twenty extra road drivers for Monday night, but he has no other freight for such casual or extra drivers for the rest of the week. This doesn't necessarily depend on the number of people that he has in the city if the employer does what we call keep a normal compliment of city people working at all times. Of course, again, he has control over the number of city employees that he feels he needs on his regular work force and some employers have more than that **[791]** compliment and others what we call less.

The Court: All right. Thank you.

Q. (By Mr. Wells) Now, it's alleged in this complaint that certain types of driving are more desirable and others less desirable. What are the facts in that regard? A. (By the witness) The facts as related to me by our membership over these years are——

Mr. Fenton: Your Honor, I object to that on the ground its hearsay.

Mr. Wells: I think this man is qualified as an expert. He's been at it for a generation.

The Court: I think so. I'll overrule the objection.

Mr. Fenton: Is this going to be opinion testimony of this man as an expert, or is it going to be what was told him by someone else?

Mr. Wells: It's going to be this man's experience as an expert.

The Court: I think what he has observed in his position as an officer of the union and as an employee and member of these local unions—Of course, an expert can't help but take in some hearsay testimony. I'll permit it, so I'll overrule the objection. Let's hear what he has to say about it.

A. (By the witness) What our members say is along with **[792]** what my experience personally has been as a driver, that a man working for a company in the freight business has choices. Perhaps at the beginning he wants to either work on the road or he wants to work in the city, if he wants to work in the freight, and he looks at what is available, and the road driving portion of it is an operation that takes a driver from his home domicile to whatever point the company has operations. If it's on a single-man operation, generally speaking, he has to go to the other end and layover at least a day and come back, knowing that other things might enter into it to hold him at the other end for two or three days before he comes back. If he's on a sleeper operation, when he leaves home he may not get home for six to eight days, so this is an entirely different operation, not only from that, but because the road drivers have to start out on the bottom of the extra board and take such runs that are available. He has no guarantees. The only guarantee he has, if the employer calls him, puts him to work, then he has a guarantee for one day or for that trip.

On the other hand, the city operation is such like in the south we have an eight-hour daily guarantee of a five consecu-

tive day week, so he has a weekly guarantee until he is legitimately laid off under the contract. He can work his daily guarantee and barring overtime, for which he gets paid prime pay, he knows when he finishes and goes home he'll be at home with his family. He knows he has his weekends or his off- **[793]** days off at home. He knows what they will be and he can make other plans.

So our membership, it's two different worlds. The man makes his choice, then whether he would prefer, and many of our drivers prefer to work in the city under those types of conditions than to be road. It's people's preference to be on the road. They just like to go and stay rather than being tied down at home. So it's two different operations entirely as far as our members is concerned.

Q. Which is more desirable? A. It depends on the individual. We have had road drivers who worked on the road for two or three years and then said well, I just can't take this, I want to work in the city. They go to work in the city and work in the city the rest of their life and say I wouldn't go on the road at all. We've had city drivers who worked for awhile in the city and say, well, handling this freight is just too tough, if I can get on the road where I can drive and lay over and do what I want to do out on the road, well, I would prefer to do that, so it works both ways.

Q. You say you have had members that have been in one unit and go to the other unit. What has been the practice when that happens with respect to the seniority? A. Well, of course, the answer is simply this: We have got a lot of companies under contract, so it happens in both ways, **[794]** but there's been instances where a company let a man who worked on the road for them go to work in the city, and of course, when he goes to work in the city he would go to work as a new hire in the city for bid purposes, but retain his company seniority as far as fringe benefits, or vice versa, from the city to the road, but in other cases a man who has worked for T.I.M.E. on the road

for five years elects to go to work in the city, so he goes over to Strickland and hires out as a city employee and stays in the city from now on.

Q. In either event, his bid and layoff seniority is computed from what time? A. From the time of his last hire into that unit.

Q. Is that true universally and without regard to any other consideration? A. Well, no. It is true in the man voluntarily moving from one place to another. In the instances where the employer has changes of operation——

Q. We will get to changes of operation in a moment. Is it true with respect to all employees covered by the contract, whether they are white, black, brown or whatever? A. Yes.

Q. And have you found that there has been some mobility between these two units in that the fact that a fellow loses some seniority, some bid seniority in going from one unit to the other, has not or has it, or has it not erected a barrier **[795]** between those two units as far as mobility is concerned? A. He has erected no barrier if the man involved wants to make it move, because even in instances where the company has a policy not to hire from one unit to the other, such people can easily make contact with and go to work for another company which they do all the time in another unit.

Mr. Wells: In that connection, if Your Honor please, we call your attention to the stipulation in the pre-trial order that that is no such barrier insofar as how mobility is exercises as far as T.I.M.E.-DC is concerned.

Q. (By Mr. Wells) Now, very briefly, there has been conversation in this record with respect to change of operations. I believe you're already testified about the improvement in highways and in equipment and so on. And the record further shows the change in the economic size of the various employers in the industry. Does this make necessary changes of operations with respect to domicile of employees or runs they take, etc.?

A. (By the witness) Well, according to the employer, it makes it necessary for him to change, to have a more efficient operation, or to operate the business the way he wants to and since he takes that position and makes moves, we negotiated in contracts some provisions to give some protection to our membership who would be affected by any such moves, and as contract by contract goes along, we have, we think, improved those provisions in the contract as far as we could to the **[796]** present time to protect people who are affected and move by such changes.

Q. I believe you indicated earlier that in the old days, Dallas to Houston, there would become conflicts between the Dallas 745 drivers and the 968 drivers in Houston, and now taking the geographic area, longer than that, say, Houston to Memphis within the Southern Conference, what happens if drivers domiciled in Memphis, if his employer figures he can do a better job if he moves them to Dallas or Houston? A. Well, over the period of time it has developed from a point where back in the forties the employer of necessity had, say, road drivers domiciled every hundred and fifty to two hundred miles in order to be able to handle the business. Now, with the improved highways and improved equipment, the driver under the sixty-hour rule of the interstate of the Interstate Commerce Commission can run long distances up to, here in the south and parts of the west, particularly they can run in excess of five hundred miles within their hours of service. So this has caused the employer to completely shut down his domiciled road drivers for the hundred and fifty to two hundred miles, three hundred miles, and so forth, and between Dallas and Memphis where originally he had drivers domiciled at Dallas, Texas, Little Rock and Memphis, now he has people domiciled only at either Dallas or Memphis handling all operations between those points.

Q. Now, briefly, how is that change of operations handled **[797]** with respect to the union end of it? There is testimony already in this record as to what the employer does with respect

to making the proposal and circulating it to the affected local unions. A. Well, the various conferences have their own rules in connection with it, but all of them have to follow the provisions in the contract as to change of operation and what happens, and so the first thing that happens is the employer makes his proposal and gives copies of it to the effected unions, they go over it and most times, say, in the south, local unions involved will call meetings of the members who work for that company under it and say here's what the employer proposed to do, and get their reaction to it. Then in the south, we call what we call an exploratory meeting. We call a meeting of those involved local unions at which time jointly those affected unions discuss the proposed change and advise their objections, or what they think ought to be done, or not done on it. All of this is done in connection with our position of protecting those people affected insofar as their seniority is concerned in any proposed change.

It is for the same reason that in the south we have negotiated the modified seniority provisions in the road where the employer was moving these people, or closing down domiciles, eventually our people negotiated in a contract a provision for modified seniority, so that if an employer did away with the **[798]** say, in Houston and was going to operate the same business between Dallas and Fort Worth out of Dallas, these road drivers could then take their seniority with them and go to Dallas.

Well, by the same reasoning, in the change of operations, the protection is there to provide the authority to the change of operations committee to listen at what change the company is going to make and ascertain what people are affected and to what degree so that they can make the determination what seniority these people will have to follow that work.

Q. After you have had this exploratory meeting and found out what positions of the various affected local unions are, what happens? A. Then—well, the change of operation is set up to be heard. It is set up by—if the change is wholly, say, within

the Southern Conference, the Southern Conference jointly with the employer sets it on their agenda and notify the employer involved and the unions involved to be a specified time and place for hearing on the change of operations.

Q. Who hears it? A. A committee composed of equal representatives of the union and the employer.

Q. How are the union representatives selected? A. They are selected by the unions involved. Not involved in this change, but by the unions involved in the contract, by appointing grievance and change operations committees to hear **[799]** all such cases for that area.

Q. All right. Then, the presentation is made by the employers, I believe the record shows objections or acquiescences or comments are made by the interested party, and decision comes forth. A. If they can agree on a decision, it comes.

Q. If they cannot agree to a decision, then what happens? A. Then it would be deadlocked and at that point more than one thing can happen. Maybe the employer is saying that the —at some point in time the employer will say, well, how about me re-arranging my proposal and bring it back in and he is told yes, you can do that, so he re-arranges it, puts it back on the agenda for rehearing if the employer thinks that he has a basis for bringing it back because of new evidence or otherwise.

Q. And assuming he doesn't do that, and there is a deadlock, what happens? Is there an appellant procedure? A. There is no appellant procedure if, as I stated it, it was wholly within the Southern Conference,

Now, if the dead lock affected the employer-unions in another area, then there would be a place. You would have to take it to the next committee of the multi-conference, or the national committee.

Q. Just explain that briefly. Assume it is between Dallas and Los Angeles for example. **[800]** A. If it's a change of operations,

or a grievance that involves two conferences, each conference, meaning the union's side of it and the employer's side of it, appoint equal representatives to set with equal representation from the other conference to act as a multi-conference committee with authority to hear such case and make a decision on it, which is final and binding.

Q. And the same procedure, I take it? A. Yes, sir.

Q. Then, is there an appeal from that? A. There is no appeal if there is a decision made.

Q. And if there is a deadlock. A. If there's a deadlock and it involves both conferences and it has been heard by the multi-conference, then that would settle it unless it was based under the interpretative clause of the Master Contract to take it to the National Committee.

Q. Is it customary in the practice by either a conference committee, as the case may be, or the multi-conference committee, to make seniority decisions with respect to changes of operation? A. Yes.

Q. And that can be either on a dovetail or end-to-end or some modification, depending on the particular circumstances involved is that correct? A. The contract we have negotiated has broad outlines **[801]** intended to set up general rules of handling mergers and certain types of changes, but the language of the contract then specifically says that when the parties, knowing that circumstances always arise in changes that may be other than the general provisions, it gives full authority to a change of operations committee to rule on what the seniority of the affected people shall be irregardless of other lines.

Q. All right, sir. Now, back to the separate unit for a moment. Are you familiar with the phrase "Line of progression"? A. Line of progression. I haven't heard it used a great deal, but I think I realize what the term generally means.

Q. I use it for these questions in the sense of an industrial plant where a man enters at a low-grade job and through a line of progression ends up at a higher grade. Do you understand that? A. Yes.

Q. Now, is there any place in the experience of the Teamsters, or in the trucking industry where that concept of line of progression is applicable? A. Well, we have contracts in the garage. We have contracts covering the city people. We have contracts covering the clerical people where that concept always applies, meaning that——

Q. For example, take a garage. A. Meaning that any contract such as the garage, where we **[802]** have more than one classification of work and different rates of pay, different conditions applying to each job, that the seniority, we say, of the people involved shall apply, meaning that whatever these people involved think may be better in operations under that contract, they should have a right to go to, so in the garage agreement, depending on what the garage agreement says is the top rate of pay. Sometimes it's a head mechanic, sometimes it's an electrician or specialized job. If it carries the top rate of pay, then if there is an employee that works under that and his seniority, and is qualied to do the work, then he may migrate or bid on that other paying job.

Q. If I understand you then, within the garage agreement as presently constituted, there could be a line of progression from the low-entry level up to a skilled craftsman. A. If he has seniority, he can go there at any time if he's qualified to do the work.

Q. All right. Similarly, in the office are there various lines of progression? A. Yes. They are all under one seniority roster, and the seniority provisions permit any employee to bid on any job if they are qualified, anl have enough seniority, they can get it.

Q. And within the city unit, are there lines of progression under some contracts? A. Well, going back to what we talked about in the forties, **[803]** we specifically had classifications of dock workers, forklift operators, drivers and checkers, with different rates of pay. Now, the present contract still provides for different classifications, and some different rates of pay, and yes, the seniority provisions are the same. Any employee under that contract, if he has seniority and is qualified, can bid on any job and get it, but the important thing is there that too many of the companies, even though they have the classifications, they will pay the employees one rate of pay so that they get the benefits of using an employee to do any work and don't have to make a change in his rate schedule, but he still has that contract. He can still bid on the classification.

Q. All right. I take it then that there are lines of progression within units as you have indicated in your testimony. A. Yes.

Q. In your experience, has there been any line of progression between units in this industry? A. No. Now, let me amplify that to this extent: The contracts make provision that if you go to work under the garage agreement, your seniority date is as of the first date you go to work there. It has nothing to do with you having to work for the clerical part of it as a cashier or something for two or three or five years or work on the road.

On the other hand, as a general attitude, the Teamsters' position here is that if an employer elects, say, from the **[804]** road, because that is involved here, if on the road he elects to take some city people who work for him and give them opportunities to work on the road, of course, he is going to give them seniority as of the date they start to work, but if he elects to use people out of the city, we simply say to him, if you're going to use them, then use them by seniority, out of those qualified people who can do it, use the top seniority man and give him an opportunity to move.

Q. That's a matter of selection for movement between units rather than a line of progression between units. A. He has no right to move from one to the other. The clerk has no right to go to the garage. The road has no right to go to the city. The city has no right to go to the road.

The Court: Not as a matter of right, but he could as a matter of choice if they were available.

A. (By the witness) Yes, sir. Oh, there's nothing in either contract that prevents an employee working for the same company when he sees a vacancy under one of the other contracts, saying to the employer. I want to go to work there and he says fine, you're qualified, come on over. He can do that.

The Court: He can't bump somebody out.

A. (By the witness) He can't bump anybody. When he moves under our contract, if the garage man, who is also on the trucks and so forth, he's qualified on a piece of equipment, if the **[805]** company says yes, you have got that vacancy on the road, he can work as a garage man for five years and the day he goes to work on the road, he starts as a new man for bid purposes. He takes all the seniority from the garage for fringe benefits.

The Court: He loses his seniority for bid purposes in the garage.

A. (By the witness) Yes.

Q. (By Mr. Wells) Is that true without regard to race? A. (By the witness) That is true without regard to race or anything except the fact that he has worked for the employer.

The Court: Sort of have to let go of one before he can grab onto the other one.

A. (By the witness) If you take hold of the second one, then you have to give up the first one. The contract don't say that you have to, as some of them say, quit the city to go to work over here, but road contracts say if you come to work here,

then you have to give up seniority back there where you came from.

Mr. Wells: If Your Honor please, I believe this record shows at least in Memphis that there is some kind of a rider consistent with the system generally whereby if the employer selects people in one unit on a seniority basis and they desire to go to another unit, they have what we call a retreat right for, I think, a thirty-day period. You don't have to let go of one trapeze before you can catch the other one.

[806] The Court: Except for thirty days. After that you do.

Mr. Wells: Right.

The Court: You can't have your position in two units.

Mr. Wells: Right.

A. (By the witness) That's right.

Q. (By Mr. Wells) Now, you have indicated that is without regard to race. What has been your experience with respect to treatment of persons of various races within the Teamsters Union; what was the situation back in the early forties when you got in 745? A. (By the witness) Well, when I first got in the union the situation was, as it was then in most of the south, if I—at first I didn't own a car, so I had to ride the bus, or streetcar to go back and forth to work myself, and I sat in the front of the bus by law and the black had to sit in the back.

By the same token, when I first got in the union and went to the union hall, why, I noticed that the whites sat in the front and the blacks sat behind. One of my first jobs was trying to organize and I discovered that the employers in my mind took advantage of the situation to the extent that some of them would, when we organized, some people would stay in the freight at one company, or in the warehouses, particularly, **[807]** and got some little better wages and conditions, then the employer sought to hire blacks and put them to work as non-union because they would put them to work cheaper. So we particularly

tried to go out and see if those people wanted to get organized so that we could bring them up to the same level so that there wouldn't be unfair competitive situations between the workers.

Now, the people we were able to organize who were black and came into the union—when I first got to be a principal officer of the union in '47, one of the first things I did was to tell our membership that as long as people were organized into our union and had contracts or came to our union meetings, that all people would have to be treated alike. That included seating or voting or anything else in our union, so that's the way it was from that point forward.

By the same token, when I first got in the union and went to a group of Mexicans and service people who worked for Texas Pacific Railroad where I originally came from, they had been under another union agreement, and they elected to come over to the Teamsters and see if they could improve their lot. The first thing we did when we negotiated that contract was to take out all bars of demarcation, or whatever you want to call it, between the classifications so that our seniority provisions would apply to anyone who worked under that agreement.

So this is what we have always tried to do since then.

[808] Q. With respect to participation in union affairs, is there any difference based on race or color or national origin? A. There is no difference at all as far as our policy or our attempted actions are concerned, and if there are any such instances, it is because of still some individuals in some isolated places.

Q. Now, that's true within your internals of the union. With respect to the application of collective bargaining contacts, is there any difference between black, white, brown or racial origin? A. Not a bit.

Q. Do your unions contain various ethnic groups and persons of various color? A. Yes.

Q. And do people who work in similar jobs have similar conditions and similar pay regardless of that? A. Yes, sir.

Q. Has your union, or at least has it at the international level, has the union taken positions with respect to legislative matters with respect to race and civil rights? A. Our union has on a national and on an area basis, and mostly on a local union basis, taken action on that level to try to help the situation as far as the minority groups are concerned, to the extent that quite some time ago our international union and another, which is known as the other **[809]** largest international union other than the Teamsters, joined together in a program and devoted huge sums of money and manpower in an effort to try to help socially the economic plight of the minority groups across this country.

Q. You referred to it as what? A. What we call the Alliance for Labor Action, ALA, sponsored by the United Automobile Workers and Teamsters.

Q. Briefly, what was done there? A. The two unions developed a policy of cooperation and jointly put in sums of money to provide manpower and actual funds and money for minority groups to set up programs in localities all across the country, such as Atlanta, Georgia, Mississippi, Louisiana, Los Angeles, and Watts to try to get a better picture of those people. We did this in conjunction with arms of those minority groups. We didn't just do it ourselves. We went in to develop those groups themselves to help themselves, and provided manpower and money to assist them.

Mr. Wells: If Your Honor please, I believe I am through with this witness. I'd like to have a moment.

The Court: Why don't we take a recess, then if you have got more questions, finish up with him and we'll give counsel for the other parties time to get ready for cross-examination. **[810]** Let's stand in recess until 10:45.

(Recess.)

The Court: All right, Mr. Dixon, would you take the stand again, please, sir.

Direct Examination (Resumed)

By Mr. Wells

Q. Mr. Dixon, there is an Article 38, a part of the National Master Freight Agreement, applicable to each of the four bargaining units prohibiting discrimination because of race, color or national origin.

Briefly tell the Court how that provision could be implemented by any employee in the freight industry who felt that there had been such discrimination. A. This is a basic reason why any employee can file a grievance and carry it through the grievance machinery to get a decision if he feels like the company has violated that provision of the contract, or others related to it.

Q. Briefly, what is that grievance procedure? It's set out in detail in the contract itself, but just summarize it for the Court. A. It's a procedure that provides that if there is any dispute between the employees as against the company, he can take it up with the company himself; he can have stewards or agents of the union to represent him and failure to settle it, **[811]** it can be filed as a grievance to a grievance committee set up under the contracts who have authority to hear the evidence in the case and make a decision that is final and binding on the parties.

Q. And is that basically set up the same way as a change of operations committees that you have testified about? A. Yes.

Q. Do you meet in such committees periodically? A. Different areas meet at different periods, but yes, they all meet periodically, either on a monthy basis, two months, three months or however it's set up. Likewise, the areas, depending on their needs, set up city grievance committees, state grievance committees or multi-grievance committees.

Q. In the south, what is the fact? A. In the south it is set up into what we call multi-state area grievance committees so that all grievances are not handled and settled locally between

the local union and the employer. It's heard by a committee once every month. They meet and these build up to a total of around a thousand or twelve hundred grievances a year that are heard by that committee. If they are not settled, and if they are deadlocked at that level, they are appealed to what is called the southern conference area appeals committee, which meets every three months normally to hear any deadlocked cases that have been left over in the lower level.

[812] Q. Is that procedure available to any employee without reference to color or race in the freight industry who wishes to take advantage of it? A. Yes, it is.

Q. Is it a normal remedy in the situation where it is found that a violation of the contract has denied employment or has denied a run or has denied wages to a person, that the committee will order employment in the proper spot and back pay? A. Including seniority if it's found that the employer should have put a man to work at a certain time and failed to give him his rights, full seniority. They will make a ruling on that also.

Mr. Wells: That's all. Thank you very much.

Cross-Examination

By Mr. Fenton

Q. Mr. Dixon, in your direct testimony you described the organization of the Teamsters which includes the locals, joint councils, the area conferences—well, pardon me, the state conference, and then the area conferences, and of course, the International itself.

Now, is this organization all provided for in the constitution of the International? A. Is it all provided for in the International constitution?

[813] Q. Right. A. Yes.

Q. Specifically along that line, you mentioned that if there are, I believe two or three or more locals within a city, that it

is required that these locals form a joint council. Now, is that requirement set out in the constitution? A. Yes.

Q. So if the local wanted to—let's assume that a local in the city where there are two or three or more other locals, that local has no choice by itself as to whether or not it desires to join the joint council. It is required to join, isn't that right? A. If there is a joint council charter issued, then any local union within the area covered by the joint council would belong to the joint council, yes.

Q. Who issues that charter? A. The International Union.

Q. Now, in describing your employment history with both employers and the union, I believe you testified that at some time in 1947 that you were appointed business agent for Local 745 when it was under trusteeship, is that correct? A. No. I said I was appointed a business agent for 745 in early '46.

Q. I'm sorry. '46. Who appointed you? A. It was not under trusteeship.

[814] Q. Well, were you appointed at any time when the local was under trusteeship? A. Yes.

Q. When was that, sir? A. That was in late '47.

Q. Which local was that? A. That was in Local 745 in that instance.

Q. All right, sir. When you were appointed to that office, when Local 745 was under trusteeship, who appointed you? A. The trustee of that local union.

Q. How was that trustee chosen? A. The trustee is appointed by the general president of the International Union as required under the constitution of such International Union.

Q. Yes. I believe you also testified in describing the conventions which occur with respect to the International, that some locals are entitled to more delegates than others. Is that correct?

A. Well, I said that they were entitled to delegates. Each local union who has a charter is entitled to a minimum number of delegates, and from that point on the constitution spells out the ratio of membership needed to increase their delegates on up to whatever membership they have.

Q. So the more membership you have the more delegates you get, is that right? **[815]** A. Yes.

Q. And that is provided for in the International constitution? A. Yes. And the constitution provisions for that, of course, is put in there by the delegates from the local unions themselves. Now, you also testified as to four bargaining units which exist in the Teamsters union, the over-the-road, the city and the garage and the office.

Q. Now, although there are four separate bargaining units, isn't there one union negotiating committee for all of these separate unions? A. Well, I testified that there were four units involved in this case, in this part of the freight industry. I didn't say that this was the only unit involved in the Teamsters.

Q. Right. But with respect to the negotiating committee for the union, isn't that committee the same one for all of the different units? A. It is at the present time, but it hasn't always been so.

Q. So—— A. Just as it hasn't always been so that we had one National Master Agreement.

Q. Let me refer you to Plaintiff's Exhibit 203(a), Mr. Dixon. This exhibit contains the collective bargaining agreement on the Southern Conference, and let's take a look first at the Southern Conference Area Over-The-Road Supplemental Agreement. **[816]** Now, the negotiating committee for the Teamsters there is Mr. Miller and the others that are listed under there, isn't that correct? A. Well, there's a list of negotiating committees listed under the Southern Conference of Teamsters.

Q. Right. And the National Over-The-Road and the City Cartage Policy and Negotiating Committee. You see that there? A. Yes.

Q. And you went through in your direct testimony and described where these various individuals on the National Committee came from, did you not? A. Yes.

Q. All right. Now, this committee, of course, negotiates for the employees, does it not? A. Well, the union committee negotiates for the employees.

Q. Right. And with respect to the local freight 480 pickup and delivery supplement——

The Court: That would be the city, would it not?

Mr. Fenton: That is the city, correct.

Q. (By Mr. Fenton) Now, turning to the negotiating committee for that supplement, which is on Page 159, is that the same union committee? A. (By the witness) Yes.

The Court: Same members?

[817] A. (By the witness) Well, they may not all be the same members. I haven't checked one list against the other.

The Court: Well, Counsel is apparently checking.

Mr. Fenton: Your Honor, I was referring specifically to the National Committee here.

The Court: Yes, sir. That is the same membership.

Mr. Fenton: My check shows the same membership.

Q. (By Mr. Fenton) Now, then, referring on down to the garage supplement and again to the committee, the composition of the National Committee for the union on this, is that the same National Committee? A. (By the witness) Yes, it's the same committee. The answer to your question is that these lists are made up of those negotiating committees. Now, out of that number of us who were on the negotiating committees, a part

of us may have been dealing with the, like, committee of employers as a subcommittee to negotiate the clerks, while another part of us were negotiating garage and so forth, but we were all a committee for the union.

Q. When you say you all came from—I'm sorry, I didn't understand the first part of your answer. A. Well, the union selected as local group of us as **[818]** negotiating committee members to negotiate with the employers. They were attempting to negotiate a national agreement and all of these supplements. In doing that we had a portion of us meeting with a number of the employers to negotiate the National Master part and some of the rest of us were negotiating over-the-road parts and some of the rest of us were negotiating the city part and some of the rest of us were negotiating the clerical and still another part negotiating the garage part.

Q. Was the overall committee, out of which the separate committees were chosen, was that performed first? A. Yes.

Q. Mr. Dixon, I hand you again a copy of Plaintiff's Exhibit 203(a), and refer you to the National Master Freight Agreement in this exhibit and to Article 2, Section 4. This says that the employees, unions, employers and associations covered under this Master Agreement and the various supplements thereto shall constitute one bargaining unit, is that correct? A. Yes.

Q. Now, you were also asked some questions by Mr. Wells with respect to the situation of a company using its city drivers to make part-time or casual road trips, and I believe you testified that the company could run into some problems if it did this; that there are certain requirements by the Interstate Commerce Commission, and I suppose by the State Railroad Commission, that an employee can only work a certain **[819]** number of hours, then he has to take a rest.

Now, let me give you the situation of a city driver giving up his city work and transferring to the road and becoming a permanent road driver. In other words, this is the only kind of

work he is doing now, road-driving work. Now, would he run into the same problem in that situation? A. If he started to work on the road and didn't have any other job, he would be no different than any other new hire of the employer.

Q. So these hour problems that you discussed in your earlier answers would not exist in the situation I have given you, is that correct? A. Like I said, it would apply to him the same way it would apply to the road driver who wants to go to the city. As long as you don't try to do both of them at the same time, he has no problem.

Q. Right. So if the driver, city driver becomes a road driver and road driving is all he is doing now, these hour problems and so on no longer exist. A. As I said, he is the same as any other new hire under those conditions.

Q. If he is the same as any other new hire, do those problems exist? A. As far as I know, there's no problem for a new hire other than the requirements of the company and regulations he **[820]** has to work under.

Q. Now, I believe you testified that your association with the union started in 1944. Is that correct? A. No, sir.

Q. At least you were—well, what was the first year, '45? A. I started to work driving in 1940. The question that you refer to that I answered was when I first joined and started participating in the activities of the union, which was in 1944.

Q. 1944, sir? A. Yes, sir.

Q. Do you recall any black road drivers in Dallas at that time? A. At Dallas?

Q. Yes. A. Yes, sir.

Q. How many? A. I don't know the number.

Q. Do you know what companies they worked for? A. No, sir.

Q. What would you say the number was in relation to the white road drivers? A. I'm sure it was real low. Another way of saying it, my opinion from my experience is that it was real low.

[821] Q. Do you know, Mr. Dixon, whether or not a man who starts out as a new hire for a trucking company always has the choice as to what job he is going to get? A. No. It depends on what job is available and what his qualifications are.

Q. Well, are you aware that in all instances that even if jobs are available, and that a man is qualified for those jobs, that he is always going to get that job? A. No, sir, I have known of many people, including a brother of mine that tried to get a job but he couldn't get it and he thought he was qualified.

Q. So we can't really say that a man always has the choice as to what job he is going to get, can we? A. No. But he has his choice of the ones he wants to try to get, or apply for.

Q. He can apply for a job? A. Yes.

Q. But he can't be sure he's going to get that job. A. No. Only the employer can answer that part.

Q. To your knowledge, Mr. Dixon, has the Teamsters ever filed a grievance on behalf of a black applicant who was not hired as a road driver? A. I don't know of any instance where a black applicant for a road drivers job has filed a grievance asking that it be carried through the grievance machinery. I'm not saying it **[822]** hasn't happened. I don't personally know of any instance where it has happened.

Q. Now, I believe you testified that with respect to the garage agreement that any employee covered by that agreement can now go to any other job covered by the agreement if he is qualified to so move, is that correct? A. In the garage agreement?

Q. Right. A. Speaking of the garage agreement under this National Master, that's correct.

Q. Are you referring to all the garage agreements? A. The question was propounded to me based on the contract in effect here, which is the Southern Conference Supplement to the National Master.

Q. So your testimony was in respect to the Southern Supplement Garage Agreement, is that correct? A. Well, in further answer to your question, the first part I answered on it was referring to the—a company that is not under this agreement, but is under a separate agreement. That is the Texas and Pacific Motor Transport System, and its garage employees.

Q. But what I'm trying to find out was—Well, first let me get your testimony with respect to the garage agreement clear.

Wasn't your testimony that a man covered under the **[823]** garage agreement can now move to another classification covered under that same agreement if he is qualified and keep all his seniority rights. A. Under this garage agreement in evidence here, which is the freight garage supplement in the National Master, he can do that if he's qualified and has the seniority.

Q. Does this apply to all garage supplements or just the Southern Conference one? A. This applies to the Southern Conference Supplement.

Q. Are you familiar with whether or not that's true with respect to the other supplements, the other garage supplements? A. No, I don't personally know what would be in a supplement.

Q. Let's talk about the Southern Supplement now, the Southern Garage Supplement. And that supplement became effective, I believe, April 1st, 1970, right along with the National Master Freight. A. Well, the present one became effective then. We have had an area garage agreement in the south and in areas of the south for several years, not just the three-year period.

Q. Right. Let's go back and discuss those prior garage agreements for a moment. Under prior garage supplements, could a man covered by that supplement move from one job classification and keep his seniority?

Mr. Wells: Object to the question unless **[824]** it's pinpointed as to a specific agreement.

The Court: Well, I think they are talking about one here. If the witness has any question about the agreement he's talking about, he might inquire of Counsel, but you know what agreement he's talking about.

A. (By the witness) I only propose to answer it for the agreement I know about, and if his question relates to this supplement and its beginning up until now, the answer is yes. His question said other garage agreements, and there are other garage agreements in many localities, including the south, that are not covered under power of attorney or the National Master. I have no personal knowledge of that except I can go to my records and see what contract you're talking about.

Q. (By Mr. Fenton) Well, do you know whether or not that —Let me rephrase that question.

We received answers to interrogatories from the company, and in the interrogatories we asked the company whether they interpret any provisions of any present or past collective bargaining agreements as prohibiting servicemen at their Nashville terminal from moving to the position of mechanic and carrying with them their terminal seniority, and their answer was yes as to the past agreements, no to the present agreement, and of course, the present agreement which covers servicemen at that facility is the Southern Garage Supplement to which you have been testifying. **[825]** A. (By the witness) No, sir.

Q. Pardon me? A. The answer to that has to be no, because you are proposing two questions in the question you propounded.

Q. I haven't propounded my question to you yet, sir. I am still—I am just trying to familiarize you with why I am asking this question.

Now, the agreement that presently covers servicemen of the Nashville facility is the Southern Supplement, which became effective April 1st, 1970. Now, prior to that time, the agreement that covered garagemen at that facility was the Southeastern Area Garage Agreement covering mechanics and servicemen.

Now, my question to you is, if you know, under the Southeastern Area Supplement, which was in effect from 1967 until 1970, could an employee covered by that agreement move from his present classification to another classification and keep his seniority? A. Are you speaking of those employees covered by that Southeastern Area Teamsters Agreement, or are you talking——

Q. Yes. A. ——also about the employees working for the company who worked for another union or worked in another union?

Q. I'm talking about employees working for the company at the Nashville facility who were covered by the Southeastern **[826]** Supplement at that time, during the period, 1967 through 19—through March 31, 1970? A. My knowledge goes to this much: That during that period in the southeast, what is called the Southeastern Area Garage Agreement wasn't a uniform garage agreement in all of the places that it covered. There was different provisions for wage rate and certain conditions in many of the places. Now, further, my knowledge is that in Nashville where you speak of, as in some other places, the Teamsters don't represent all of the garage employees. When that happens, a proportion of them belong to another union, then that portion is controlled by whatever agreement that union has with the employer.

Now, so far as I have known, any employee represented by the Teamsters under the Southeastern Area Agreement would

have been able to use their seniority in any classification within their area of the agreement.

Q. Is it your understanding that under that Southeastern Conference that assuming those employees were represented by the Teamsters, that under that Southeastern Supplement they could take their seniority with them from one classification to another; that is, their bidding seniority or do you know? A. Well, as I said, only to my knowledge, normally contracts that are negotiated on that basis are sent to the office for approval. Now, we read them over and approve them as to form. We don't tell the local union that you can agree **[827]** to this or you can't unless, as provided in the constitution, there is things we find in there that would seriously jeopardize the interest of a sister local union in the area. So on that basis I have looked over almost every agreement that has ever come into the office, and there's nothing in my recollection at this moment that says that we had any garage employees that we represented in a contract that could not utilize their seniority on any classification that we represented.

Q. That goes back—— A. But I wouldn't say that it wasn't done. I just simply say I don't recall at any instances where we had it.

Q. Well, your answer would be you're not sure. A. I wouldn't be positive of that particular one because I don't have the contract in front of me.

Q. Very well. To your knowledge, Mr. Dixon, is the relationship which exists between the Teamsters International and T.I.M.E.-DC the same relationship which exists between the International and Roadway? A. Now, is your question between the International and those companies in both instances, or did you say the union on one hand and the International on the other?

Q. The International in both instances. A. I can't speak for what the position of the International Union is on it.

Q. Well, what about the union? **[828]** A. I can only speak for that part of the union that I represent.

Q. Is the contractural relationship which exists between the Teamsters and T.I.M.E.-DC basically the same as that which exists between the Teamsters and Roadway?

Mr. Wells: To which we object. Counsel is apparently seeking some testimony in derogation of the stipulation as to the contracts between local unions and employers. Now, he has stipulated to that fact and it is in the pre-trial order and I think he's bound by it.

The Court: Counsel, what is your reply to that? What is your purpose of this question?

Mr. Fenton: My purpose is to ask this witness whether to his knowledge the overall contractural relationship between the Teamsters Union is the same, the overall contractural relationship between those unions and T.I.M.E.-DC is the same overall relationship which exists between the Teamsters and Roadway, if he knows.

The Court: I'll permit him to answer. Overrule the objection. The stipulation, of course——

A. (By the witness) I would want to know what you mean by overall relationship.

Q. (By Mr. Fenton) Are the basic contractural relationships the same? A. (By the witness) When our membership who worked for **[829]** Roadway make proposals for what they want in their agreement, they are normally sitting in a meeting where the employees of T.I.M.E. in that category I work are also seated, and discussing it in that relationship. It may be that some T.I.M.E. employees will say, well, we propose certain things in the contract. Now, the Roadway employees knowing that we are talking about negotiating the same things for both companies, well, he will say we think we ought to have something. Now, between them, they will generally jointly agree,

well, let's go for this because we can't have everything each one of us wants. So to that extent, the relationship, I would say, is the same since it is the same industry.

Q. Now, you were asked some questions about Article 38 in the National Master Freight Agreement, Mr. Dixon, and you were referred specifically to the most recent National Master Freight Agreement, which is the one that became effective April 1st, 1970.

Was there an Article 38 or any provisions similar to it in any National Master Freight Agreement prior to April 1st, 1970? A. There is provisions in prior agreements, meaning the area agreements and/or National Masters that preceded the present one that dealt with this subject. There wasn't the identical Article 38 that is in the present agreement but Article 3, for instance, and Article 41—Article 3 meaning **[830]** National Master, Article 41 of the supplements dealt with provisions where members, meaning employees of the company, can file grievances if the Company discriminates against union membership, or sex, to evade or uses a subterfuge to get around provisions of the contract.

Q. Mr. Dixon, I hand you what has been marked as Plaintiff's Exhibit 2 and this includes a copy of the National Master Freight Agreement, which was in effect from July 1st, 1964 through March 31, 1967, and do you see an Article 38 in that National Master Freight Agreement? A. I haven't looked yet. This is the National Master and Local 490.

Q. Right. And the National Master Freight is set out in the first part of it. A. First, I don't know where Local 490 is.

Q. That is a San Francisco local. A. Article 38 in this agreement says it is hiring procedures. Now, I don't know whether the article you refer to in the other agreement is a different article than this contract.

Q. Let me get the most recent National Master Freight. A. In fact, I don't know what period of time this contract is for.

This agreement says it is agreement between the California Trucking Association and Local 490, so on the face of what it says here on the termination clause, it appears to be a different contract than the National Master we have.

[831] Q. The National Master Freight Agreement, though, is included in the front of it. A. They may well have negotiated the Master Agreement into their local agreement. We've done this in many other parts of this industry that's not covered by our National Master, but these associations——

Q. Certainly. Referring you again to Plaintiff's Exhibit 2, you agree that the National Master Freight part of this document ends at Page 40. A. Well, you're pointing to Page 40 and it has the negotiating committee listed there together with Joint Council Number 7 Supplement, so I assume that this is probably the end of a certain portion of this agreement.

Q. Well, beginning on Page 41, what is it entitled? A. Well, I said it shows it to be Joint Council Number 7 Supplement Agreement.

Q. So that is the beginning of a supplemental agreement, is it not? A. It says Joint Council Number 7.

Q. Right. Now, referring to the first part of Plaintiff's Exhibit 2, which ends on Page 40, is there any Article 38 in that particular part of it? A. I don't see an Article 38 from the page you're pointing to backward.

Q. All right. Now, let me refer you to Article 38 in the **[832]** present National Master Freight Agreement, which is in Plaintiff's Exhibit 203(a), and that is the non-discrimination article. You agree? A. Well, Article 33 is a non-discrimination article.

Q. You mean—— A. You said it is the one that——

Q. Mr. Dixon, you're referring to Article 38 rather than Article 33, correct? A. Well, it is listed in—well, wait a minute.

It's 38. The way it's marked out there, I thought you had pointed to 33. It does say Article 38.

Q. You agree in the present National Master Freight Agreement that that is a non-discrimination article. A. Well, in the context of this case where we are talking about the National Master that deals with this association in this trial, that is the National Master I'm talking about. We refer to the National Master listed over here on the contract that you showed me. This is the same as many of our other contracts that also has a National Master Article in it. Maybe not all, but a portion of them. It is named National Master and tied in with some other contract, but not the same as the Freight National Master.

Q. Right. Now, my question to you is this: Is there an article in the National Master Freight Agreement which was effective from July 1st, 1964 to March 31, 1967, the same as **[833]** the one which is in Article 38 in the present National Master Freight Agreement? A. Is there an Article 38 in what contract?

Q. Is there an Article 38 in the National Master Freight Agreement which was effective from '64 through '67? A. This Agreement 38—the answer to your question, we negotiated this article 38 into the present agreement. We were not able to negotiate this particular article into the prior agreement.

Q. And that article you're referring to is the non-discrimination. A. That is a non-discrimination article.

Q. So it did not exist in the National Master Freight Agreement prior to April 1st, 1970? A. This particular article was not in our prior freight agreement.

Mr. Fenton: Thank you. That all I have.

Redirect Examination

By Mr. Wells

Q. In the prior freight agreement, prior to 1970, were there articles which could have been applied in situations where rights to wages, hours or working conditions were denied on account of race, color or national origin? A. We have for many years had wording in other articles of **[834]** our freight agreements that provided a way for even in the probationary period if an employer cuts a man off because they didn't like the way he parted his hair, if they did it because of discrimination, the man could yet file a grievance, have it processed through the machinery.

Q. Were such grievances processed from time to time? A. Yes, sir.

Mr. Wells: That's all.

Cross-Examination

By Mr. Hunter

Q. Mr. Dixon, I note that in the various contractural agreements involving the Southern Conference your name is identified as a member of the TIE, or the National Over-The-Road—I'm sorry, the National Over-The-Road Policy Committees, is that correct? A. Well, it's shown as a member of the National Over-The-Road Negotiating Committee and/or Policy Committee.

Q. Does it also show that you were a member of the regional committee that assisted in the negotiations of the Southern Conference Supplements? A. Yes, sir.

Q. Okay. How long have you been involved in the negotiation of freight agreements? A. Since 1946.

[835] Q. Accordingly, you are somewhat familiar with the various seniority provisions that exist in the National Master

and Southern Conference Agreements. A. Yes, sir. I have had the responsibility or obligation of writing many of them in prior years.

Q. Okay. Accordingly, as a matter of personal knowledge, would you say that the bulk of the seniority provisions applicable to employees covered by these contracts are found within the National Master and the various Southern Conference supplements at this time? A. Yes.

Q. Now, as I indicated, I could not help but note that you were a member, or at least identified as a member of the National Over-The-Road and City Cartage Policy and Negotiating Committee. Is that correct? A. Yes, sir.

Q. And in that function, did you become familiar with those individuals listed as members of the TEI Negotiating Committee? A. Well, I had an acquaintance with them in the negotiations over several months every three years.

Q. You got to know those people rather well, didn't you? A. Yes.

Q. In that light, I draw your attention to on Page 102 of the Plaintiff's Exhibit 203(a), wherein it does list the various negotiating committees. Are you familiar with the employer **[836]** committee people? A. Yes.

Q. In examining that list, does it appear that any of these names are employees of T.I.M.E.-DC? A. On that one, I don't see any.

Q. Okay. That is the National Master.

Referring on Page 181 of the Defendants' Exhibit—or Plaintiff's Exhibit 203(a), there is also a list of employer negotiating committee members, and apparently representing the Southwest Operators Association in part. Do you recognize any of those individuals as employees of T.I.M.E.-DC, Inc.? A. At the time that those negotiations were held, there is J. A. Pratt that was an employee of T.I.M.E.

Q. He's one of a list of ten people that is on that committee, is that correct? A. Well, in order not to mislead this record on that question, anywhere that I have answered relating to these that you show me as a list of negotiating committee members in this contract, these people generally are only a part of the negotiating committees on each side. There was no attempt to put in the written agreement everybody's name who was on the negotiating committee. I would say generally these are probably what is considered the prime negotiators on that committee.

Q. But Mr. Pratt was at that time an employee of T.I.M.E.-DC? **[837]** A. Of T.I.M.E. and a member of the negotiating committee and he is listed.

Q. That committee was with reference to the Southern Conference Supplement, was it not? A. Yes. Specifically TE was representing the Southeastern Area Motor Carrier Labor Relations Association and the Southwest Operators Association.

Q. Now, Mr. Dixon, having been involved in negotiations as many years as you have, have you witnessed the development of the multi-employer associations as sort of your adversary in the negotiating field? A. Yes, sir.

Q. Accordingly, having watched that, is it your knowledge that these multi-employer associations represent individual employers? A. Yes, sir.

Q. And that, accordingly, they act as the bargaining agent for these individual employers, is that correct? A. Right.

Q. Now, it has been stated on the record, I'll ask you if you have personal knowledge of the fact of whether or not T.I.M.E.-DC was represented by TEI at the time of the National Master negotiations in 1970? A. They were. I answer that on the basis that one of the first things we do in meeting with the employers is to give **[838]** them a list of all the people we represent by listing the powers of attorney we have, and likewise, the employer gives us a list of all the companies they represent under

power of attorney, and T.I.M.E. was one of them on the employers list.

Q. As represented by TEI. A. Yes, right.

Q. Now, you have indicated that the TEI negotiating committee did not appear to list any representative of T.I.M.E.-DC, is that correct? A. TIE?

Q. Yes. A. On the National Committee, well, the list that is printed in the National Master doesn't carry one of them to my knowledge.

Q. Were you involved in those negotiations? A. Yes.

Q. Do you recall any T.I.M.E.-DC official being an active participant in the national negotiations? A. I would have to answer that by saying that I know T.I.M.E.-DC officials. They were in attendance in Washington during the several months of the negotiations. I won't say they were there all the time, like some of our people weren't there at all times, but some of us were there at all times, and in that respect I saw T.I.M.E. as well as representatives of the other companies in various sessions with us, so this was **[839]** probably when we were discussing problems in trying to reach an agreement to some aspect of the National Master Agreement as well as the supplements.

Q. But when you were involved in the national negotiations, was it your assumption or your personal knowledge that the TEI Negotiating Committee, who were engaged in the negotiations with you, were representing T.I.M.E.-DC at that negotiation? A. Absolutely. And in that respect, when we were down to basics of trying to reach an agreement on the National Master, normally we would cut down to a small committee on the unions' side and a small committee on the employers' side, and in that respect I don't remember a representative of T.I.M.E. sitting in on that aspect of the National Master, but I put no significance to it.

Q. And you understood that the TEI Negotiating Committee represented not only T.I.M.E.-DC but represented enumerable other motor carriers in that same negotiation, is that correct? A. Hundreds and hundreds, yes.

Q. They were representing as the authorized representative of these hundreds of carriers in these negotiations. A. Yes, sir.

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[840] **DONALD SANBURN,**

called as a witness at the instance of the defendant, unions, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Wells

Q. State your name, please, sir. A. Donald Sanburn.

Q. Where do you live, sir? A. I live in La Habra, California.

Q. What is your occupation? A. I am the Director of the Transportation Opportunity Program.

Q. What is the Transportation Opportunity Program? A. The Transportation Opportunity Program is a program funded under state funding at this point under the Manpower Development and Training Act. Our purpose is to train professional heavy-duty truck drivers.

Mr. Wells: As a matter of shorthand, if Your Honor please, I have had marked for identification as Exhibit QQQ the November, 1971 issue of American Education, which is the official publication of the United States Department of Health, Education and Welfare, and I offer it in **[841]** evidence with

specific reference to the article beginning on Page 34 entitled "Top Drivers Make the Grade," if I may hand this up. This is a reprint, although the original magazine——

The Court: Any objection to the admission of Triple Q into evidence?

Mr. Fenton: No objection.

The Court: All right. It's admitted.

(Defendants' Exhibit QQQ received into evidence by the Court as Defendants' Exhibit QQQ—Article from American Education.)

Q. (By Mr. Wells) So that we can move along, Mr. Sanburn, is this or does this article in general outline and explain what TOP is and how it operates? A. (By the Witness) Yes, sir, basically.

Q. What is your function with respect to TOP? A. I am the director of the program.

Q. How long have you held that office? A. Since January of 1967.

Q. Very briefly, how was the program initiated? A. The original concept was a joint venture between the Institute of Industrial Relations at UCLA and the Joint Council of Teamsters Number 42.

Q. May I interrupt. What is the Joint Council of Teamsters Number 42? A. The Joint Council 42 is an organization of approximately **[842]** fifty-five local unions in the Southern California area.

Q. All Teamster affiliated local unions in Southern California? A. All Teamster locals.

Q. All right. Now, you say there was some participation by UCLA and then by this Joint Council of Teamsters. Just what happened? A. Well, UCLA applied to the Department of Labor for a feasibility study, which was necessary in order

to convince the government that there was training needed in trucking and UCLA conducted the feasibility study and proposed to the Department of Labor, United States Department of Labor that the Teamsters should be the body chosen to operate the program, the Joint Council 42.

Q. Under what statute? A. Under the Manpower Development and Training Act of 1962.

Q. Does that make provisions for possible subsidies to certain educational institutions? A. Yes, sir, it does.

Q. Did there come some problem of explaining to the government that the Teamsters Joint Council was an educational institution? A. Yes. The educational establishment would not sign off the proposal.

Q. Without going into detail, did you work out that red **[843]** tape and was there set up the TOP program? A. Yes, it was established and the contract was signed by Ted Merrill of Joint Council 42 as of January 31, 1967.

Q. What position did Mr. Merrill hold at that point? A. Chairman of the Board.

Q. Of what? A. TOP.

Q. What was his Teamster position? A. He was president of Joint Council Number 42.

Q. Now, was TOP organized as a non-profit corporation then? A. Not immediately. The first contract was signed by the Joint Council and the Joint Council operated the program.

Q. Now, when you refer to the Joint Council, you mean the Teamster Joint Council in Southern California? A. That's right.

Q. All right. Thereafter, did there come an organization of a non-profit corporation? A. Yes, sir.

Q. Which continues the program with Teamster Joint Council participation and sponsorship? A. Yes.

Q. Briefly, how did it operate? A. It was established as a non-profit educational organization under California law, and the Teamster president of Joint Council Number 42 became the chairman, was made the **[844]** chairman of the board and we had, in addition to Teamster officers, we had community members on the board of directors.

Q. All right. But what need did it meet. A. Well, the basic need it met was that there was some kind of tax liability and problems which had to do——

Q. No, I'm not talking about the internal problems. I'm talking about what community need did it meet, what social need did it meet? A. The idea of the TOP, Incorporated and the change of the board meant that we brought the community into the board operation of the program.

Q. Without regard to the structure, where it was Joint Council corporation operated, what was its function with respect to the community?

Did it engage—— A. Yes, the basic idea from the beginning was to recruit and train minority personnel as professional heavy-duty truck drivers.

Q. And as of that time when it was first instituted, was there a reservoir of qualified truckdrivers in the Los Angeles area, including minority persons? A. No, there wasn't.

Q. Was there an effort then through TOP to provide qualified truckdrivers with special emphasis on education of persons from deprived areas of the community? **[845]** A. Yes, there was.

Q. How did you effect that? A. Well, we set up offices in the neighborhood community for recruitment purposes, one in south-central Los Angeles, one in east Los Angeles.

Q. One of those in the so-called Watts area and another in the Spanish speaking area? A. Yes, we did. For purposes

of recruitment and from the beginning we had no difficulty in recruiting personnel for the training.

Q. All right. Then what training was given? A. They are trained in heavy-duty trucking. That means that they start out on a gas rig, a two-speed rear end, and then we move them into diesel where they get compound transmissions, plus road-range transmissions, all the modern kind of diesel equipment and different combinations of trailers.

Q. Now, in addition to learning to drive, is there instruction in connection with making logs and manifesting and loading? Just tell the Court what it is you teach people. A. Well, from the beginning, the first thing we have to do is teach them the California Vehicle Code so they can pass their written test, and get their permit to drive on the road, and from the beginning they keep a log, which is all the way through their training, so that we know when they were actually driving, when they were on a vehicle observing, when they were **[846]** backing in the yard, when they were in a classroom, so that during the eight-week period they are in, they keep the log so that they learn how to keep a log. In addition, we teach them bills of lading, we teach them trip reports, accident reports, how to fill out applications for jobs and the various things that is the business work of the job.

Q. Is there also instruction in connection with whatever the California regulatory body requirements are with respect to driving? A. Yes.

Q. Briefly, what are those? A. Well, if they are driving in California in an intrastate, they are under PUC regulation, Public Utilities Commission. If they are going to be working for a company that is under DOT regulations, we have to teach them the ICC regulations.

Q. In some of the depositions there is reference to a Class 1 certificate or a license. What is that? A. Well, in California there are three classes of licenses. The Class 3 is for a regu-

lar passenger automobiles; the Class 2 is for vehicles of three axles, and buses, and if you have a bus license you must take first aid, first aid course, and then the Class 1, which is a license which qualifies you to drive any vehicle on the road.

Q. Now, what do I have to do to get a Class 1 license? A. Well, you first pass the written exams which includes **[847]** the basic California regulations, plus the vehicle supplements which includes the lengths of vehicles, the type of vehicles.

Q. As a matter of fact, first don't I first have to have had a plain vanilla operator's license for a year? A. At least a year.

Q. How many of these deprived people out of Watts or ghetto areas had even that? A. We ran into quite a few who didn't have a license, and hadn't had one, and of course, they aren't eligible to go for a Class 1.

Q. Once you screen somebody that had an operator's license to drive a passenger vehicle, then you take them through these various courses in the business end of the industry and the regulatory provisions, both of the California regulatory bodies and the national regulatory bodies, and through the actual functions of driving trucks, is that correct? A. Right.

Q. Did you have some special equipment provided for that purpose, for the on-the-road driving? A. Yes. We developed a truck, a diesel and we put, like a box behind the cab and had the cab cut out so that the trainees riding in the cab could observe the student who was driving the vehicle, and we provided the instructor with a speaker system so the trainees could hear his instructions, and he could take them out away from the school and keep them out all **[848]** day rather than keep making trips back to pick up students.

Q. Did there come instructions both in driving in the city area and in the rural areas and deserts and mountains and so on? A. Yes, sir, right.

Q. Over what period of time would this instruction take place for a particular class? A. Eight weeks.

Q. Now, at the time you commenced this program, was there a pool of qualified blacks in the Southern California community insofar as truck driving is concerned? A. No, there wasn't.

Q. Has there been since that time? A. Not of minority drivers.

Q. What has happened since your program began in terms of the outcome of the program, the people that you graduate? A. You mean what has happened to people after they graduated?

Q. Well, how many—have you prepared an exhibit showing how many people from October 30th, '67 to May 12th, 1972 came through your program? A. Yes, I have.

Mr. Wells: Your Honor, this is Exhibit **RRR**, which we offer.

Q. (By Mr. Wells) Now, during that period of time how many persons have successfully completed your program of training? **[849]** A. In the entry program, twelve hundred ninety-two.

Q. And does this exhibit show the breakdown of twenty-four percent Caucasian, forty-three percent black, twenty-nine percent Mexican-American, four percent other? A. Yes.

Q. What would the other classification be? A. We classify Oriental, Bolivian, Puerto Rican.

Q. Now, do I understand that this exhibit then shows that a total of 1,292 persons who are qualified by reason of your course have become qualified truckdrivers. A. Yes.

Q. What has happened to them? A. Well, at our last follow-up survey, we found about eighty-five percent of them were working.

Q. In what industries? A. In trucking.

Q. Driving trucks. A. Yes.

Q. With what result as far as income was concerned? A. Well, it's a little hard. We have had different studies done. The last study indicated that the first year out of training the average earnings of our graduate was about $6,900.00, I think.

Q. Compared to what? A. Compared to under three thousand before they came in.

[850] Q. More than doubled then by reason of the program. A. Yes, that's right.

Q. Have you found an employer market for your graduates? A. Yes, we have.

Q. How did you do that? A. Well, we have job placement officers and we depend upon union business agents to let us know when they have jobs available that they can fill from their membership.

Q. And have you been able to place your graduates through these various sources? A. Yes, we have.

Q. In the industry for driving trucks. A. Yes, we have.

Q. Now, your Exhibit Triple R shows an ethnic breakdown of graduates in the up-grader program. What is that? A. That is a program we operate in the evenings and on Saturdays and Sundays and that is for people who are presently employed in the industry who can come on their spare time, their off-duty hours, and take the training to become heavy-duty men.

The Court: This wouldn't be the same group that you had?

A. (By the witness) No. It's a different group.

The Court: This is a different group of people.

[851] A. (By the witness) Yes, these must be working.

Q. (By Mr. Wells) Speaking of the second group, those shown at the bottom of Exhibit RRR, those, for example, are persons who might be hustling freight on the dock, dock workers, but who have no experience, no expertise with respect to driving trucks. A. (By the witness) That's right.

Q. Is that the type of person that is the beneficiary of the second program? A. Yes.

Q. All right. And just briefly explain it. A. Well——

Q. First, if I am a dock worker, don't know anything about handling trucks, how do I get into that program? A. Well, we have—they make application to us to get into the program and we ask that they go to their employer and ask him for a letter indicating if they take the training that they will have an opportunity to bid for a better job. What we wanted to do with the evening program is to move people up out of entry jobs into other jobs so that we could create openings for our daytime graduates.

Q. All right. You get a letter then from an employer who says that Nat Wells, who is a minority employee on the dock, that he will have a truck driving job for him if the man qualifies, right? **[852]** A. Right.

Q. Then, he takes your program, then what happens? A. Then, depending on, I suppose, who he works for, our experience has been that about half of our men change jobs. They leave the company, even though the company——

The Court: Do they take an up-graded job?

A. (By the witness) Yeah. Our experience had been that roughly half leave the company they were working for, even though the company wrote a letter saying if they took the training they could move to a better position, and of those that leave their company and go to another company, their average increased earnings the first year are about $700.00 more than those who remain with their present company.

Q. (By Mr. Wells) Are you saying that a man on the dock with seniority on the dock will take this program and then give up that seniority and go brand new to another company and make more money than he was making on the dock? A. (By the witness) Oh, yes, yes.

Q. You don't find then that the loss of dock seniority constitutes any block or barrier to some person moving into truck driving jobs. A. No.

Mr. Fenton: Your Honor, I object to that as calling for a conclusion.

[853] The Court: Well, I'm going to sustain the objection. I think his figures speak for themselves.

Q. (By Mr. Wells) How many different companies have you placed your trainees with? A. (By the witness) At last count the count was 136.

Q. At the moment are you having some trouble with the funding of your program? A. Yes, we are.

Q. Has it required a cutback of the second portion of the program where at the moment all you are on is the first program of it, that is, the entry program? A. Yeah. As of September 30th our contract with the State of California will expire on the up-grading program, and it will not be refunded after that.

Q. Are you familiar with the Western Conference of Teamsters? A. Yes, I am.

Q. Are you familiar with the fact that that organization passed a resolution with respect to the funding of a program similar to yours? A. Yes, I am.

Mr. Wells: If Your Honor please, there has been marked for identification Exhibit TTT.

Q. (By Mr. Wells) What is that, please, sir? A. (By the witness) It is listed as a proposed resolution **[854]** on negotiated

training funds. It was actually adopted by the Western Conference as policy.

Q. When was it adopted? A. February 1st of 1972.

The Court: Incidentally, all of these are being admitted into evidence unless there is some objection from Counsel to them.

(Defendants' Exhibits RRR and TTT received into evidence by the Court as Defendants' Exhibits RRR and TTT)

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Q. Even with your program, have you been able to develop yet in the Southern California area a pool of qualified blacks or minorities qualified to drive trucks? A. Well, I think we have developed quite a few qualified minorities, but it doesn't constitute a surplus pool because even now——

The Court: What do you mean by pool; you **[855]** mean surplus drivers or——

Mr. Wells: A labor pool which an employer can call on, an employer who needs a truck driver.

The Court: Evidently they are calling on eighty-five percent of them, but you mean some more up above that eighty-five percent?

Mr. Wells: I'm trying to find out if there is, in this man's experience, any such qualified pool of available drivers to employers in that area.

A. (By the witness) No. In fact, we have trouble from time to time, we get offers for jobs, to find the men who can take them.

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Cross-Examination

By Mr. Fenton

Q. Mr. Sanburn, you gave some indication of the response in the minority communities to the TOP program. Could you

please give a little more detail as to what that response has been? A. In terms of applicants for the program?

Q. Yes. A. Well, in the initial in-take period, which was back in August of 1967, we had need for 190 trainees to begin the program, and we recruited those 190 with no problem, and from **[856]** that time on in the trucking program, there's been a waiting list at every employment service office that does intake for the TOP program.

Q. So generally, your experience has been then that there has been a tremendous amount of interest, there has been more than adequate response in the minority community to your program. A. Yes, that's right.

Q. I'd like to know whether in Defendants' Exhibit QQQ, whether or not you are the project director, Donald Sanburn that is identified in this article? A. Right, right.

Q. You also indicated earlier that persons that were involved in the up-grader program, graduates of the up-grader program generally went with another company, or were making higher salaries rather than choosing to remain with the company with whom they were employed when they went into the program. Is that correct? A. I think the figures are roughly half.

Q. All right. A. Half change companies.

Q. What type of positions were the persons in this up-grader program employed in, what type of position would those be? A. They came to us from the shops, they came from the warehouses and from the city pickup and delivery jobs.

[857] Q. And to what positions were you working with them in the up-grader program? A. The basic purpose was to train them as over-the-road drivers.

Q. And this program is how long? A. How old?

Q. How long? A. Eight weeks.

Q. Is the training program eight weeks? A. Even the up-grader is eight weeks.

Mr. Fenton: No further questions.

The Court: Let me ask you, did the roughly half that you talk about going to other companies, do you have any knowledge or figures of what kind of jobs they got with these other companies? A. (By the witness) Yes, I do. Basically over-the-road jobs.

The Court: In other words, they were able to obtain employment for which they were trained.

A. (By the witness) That's right.

The Court: Do you know what the other half did? Did they stay in the same positions they were in or did some of them get over-the-road with the same employer? Do you have any idea about those?

[858] A. (By the witness) I think basically the major difference was that some of the fellows who came from the dock will transfer into the city pickup and delivery, and so their increased earnings were a little bit less than—but even men who had been driving bobtails who got heavy-duty jobs would get more overtime because they were able to drive any truck available rather than just a single bobtail, so they came back in from a run with a bobtail, they had another load to go and they could send them out.

The Court: You're saying that the other half that stayed with the same company up-graded them in some respect.

A. (By the witness) Average increased earnings the first year after graduation was $1700.00.

The Court: Now, are we talking about the half that stayed with the company?

A. (By the witness) Half that stayed with the same company.

The Court: And the others that went with the other companies?

A. (By the witness) Roughly, $2300.00.

The Court: Thank you.

Cross-Examination

By Mr. Hunter

Q. Mr. Sanburn, are you personally familiar with the defendant corporation, T.I.M.E.-DC? **[859]** A. Yes, I am.

Q. Do you know if they have facilities in Los Angeles, California? A. Yes, they do.

Q. Or the suburbs? A. Yes.

Q. Has T.I.M.E.-DC ever called upon your organization as a source of city driver applicants? A. Yes, they have.

Q. Do you recall the approximate time that took place? A. I think 1968. I think the first contact was in '68.

Q. Did you send them some applicants? A. Yes, we did.

Q. To the best of your knowledge, were they employed by T.I.M.E.? A. To my certain knowledge, at least four were hired, yes.

Q. You absolutely know that four were? A. Yes, that's right.

Q. This was in 1968? A. Yes.

Q. Do you recall the particular predecessor of T.I.M.E.-DC that was involved in that? A. Yes, T.I.M.E., Incorporated.

Q. It was T.I.M.E. Freight? A. T.I.M.E. Freight.

[860] Q. Have you had any further contact with any officials with T.I.M.E.-DC with regard to this program? A. Yes, we have.

Q. Would you illustrate what those contacts were? A. Well, our job placement officer regularly calls on T.I.M.E-DC and we have not been successful in placing people lately because of the merger, and the fact that there are still some people on layoff, but we have accepted three trainees from T.I.M.E.-DC into the up-grading program.

Q. I see. When did this take place? A. This took place in 1971, I guess, about six months ago.

Q. You indicated in earlier testimony that applicants for the up-grader program are only accepted when the employer indicates that there will be some benefit from the program if they succeed. A. That's right.

Q. Do you remember the official who was involved in that? A. Mr. Lillywhite.

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Redirect Examination

By Mr. Wells

Q. The Court asked you a question about a fellow who had **[861]** been on a—about increased income of a man who stayed with the same employer after following your program. Are you familiar with the city contract in the Southern California area? A. Yes, I am.

Q. Does it carry different rates of pay for road drivers, depending on the size of the truck? A. In the city classification?

Q. Yes. A. Yes.

Q. So if Nat Wells was able to drive what is known as a bobtail, a rather small truck, he would get a specified rate per hour. A. Yes. right.

Q. But until he had the knowledge and skill that is imparted by your program, he would be unable to take advantage of the higher rates of pay for a multi-axle, or for a tandem or what-

ever the other more difficult operations is, is that correct? A. That's right.

Q. It was on that basis that there was how much increase of those people who stayed with their same employer? A. An average of $1700.00 per year.

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[862] Recross-Examination

By Mr. Fenton

Q. Mr. Sanburn, do you know whether or not there were any contacts with your organization by T.I.M.E.-DC or any of its predecessor companies, LASME, Denver-Chicago, or T.I.M.E. Freight, making inquiry about possible placement for any road drivers? A. Well, let me put it this way: I don't know if they contacted us. We sure contacted them. Our job placement officers did call on each of those companies and talk to them about it, about our program.

Q. Were there any placements of any minority road drivers? A. I really can't tell you. I don't know.

The Court: How about these four you were talking about, what classification were they put into?

A. (By the witness) They originally went in as city pickup and delivery men.

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